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NO. 87-505

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

CHICK KAM CHOO, et al.,
Petitioners,

v.

EXXON CORPORATION, et al.,
Respondents.

[redacted]
AMICUS CURIAE AND BRIEF AMICUS CURIAE

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IN THE

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE

Shell Oil Company hereby respectfully moves for leave to file the attached brief amicus curiae in this case. The consent of the attorney for both petitioner and respondent has been obtained in writing and are attached to this motion as Attachments A and B.

The interest of Shell Oil Company is that it is a party to two cases: one in the Eleventh Circuit Court of Appeals and one in the First Court of Appeals for the State of Texas where the same issue is present—whether after a United States District Court has granted a forum non conveniens dismissal it can and should enjoin any further proceedings in state or federal courts in the United States.

In the instant case, the respondent's primary focus is on the interaction between federal maritime law and forum non conveniens; however, Shell Oil Company and Dow Chemical believe the concurring opinion of Chief Justice Clark in the Fifth Circuit articulates the correct rule of law and is a logical and appropriate extension of *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 675 S. Ct. 839 (1947) and *Piper v. Reyno*, 454 U.S. 235, 102 S. Ct. 252 (1981), reh. den. 455 U.S. 928, 102 S. Ct. 1296 (1982). The amicus curiae brief will describe in some detail how forum non conveniens is being handled practically in both state and federal courts in real life litigation, the inefficiency and waste of resources that creates, and will articulate what the amicus curiae believes is a logical common sense solution to the problems whch exist in this area.

Shell Oil Company (Shell) believes that foreign plaintiffs are manipulating the selection of the forum, the defendants named and served, and the removal statute to eviscerate this Court's rulings in *Gulf Oil Corp. v. Gilbert, supra,* and *Piper v. Reyno, supra.* Under the change of venue statute, 28 U.S.C. § 1404, Shell submits that in cases founded on diversity of citizenship the district where a case is filed may hear the case or transfer it in the interests of justice to the most convenient forum within the United States. If after reviewing the facts and legal arguments of that case, that court determines that a foreign forum is the most convenient forum for litigation of those claims then that finding should be given preclusive effect within the United States in both state and federal courts.

Accordingly, Shell requests this Court to accept their amicus curiae brief in this matter and to consider its argument which is articulated in the accompanying brief.

Respectfully submitted,

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Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all counsel of record by placing same in the United States mail, postage prepaid and properly addressed, this 17th day of February, 1988.

BURT BALLANFANT

ATTACHMENT A

January 5, 1988

Mr. Burt Ballanfant
Shell Oil Company
Litigation Section - Legal Department
One Shell Plaza, Room 4794
Houston, TX 77001

Re: *Chick Kam Choo v. Exxon Corp.*,
No. 85-501
In the United States Supreme Court

Dear Mr. Ballanfant:

This is to advise you for purposes of complying with the Rules of the United States Supreme Court that as counsel for the plaintiff-petitioner in the above styled action that I have no objection to your filing an amicus curiae in the above captioned matter on behalf of Shell Oil Company and Dow Chemical Company

Very truly yours,

/s/ BENTON MUSSLEWHITE
Benton Musslewhite
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cc: James Patrick Cooney

ATTACHMENT B

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December 30, 1987

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Chick Kam Choo v. Exxon Corporation
In the United States Supreme Court,
No. 85-505
Our File: 27,416

Dear Mr. Musslewhite:

As we advised by telephone, we have been contacted by representatives of the Maritime Law Association of the United States, the defendants in *Zipfel v. Halliburton, Inc.* and Shell Oil Company with regard to the possibility of their filing briefs *amicus curiae* in the above matter.

We have given our consent to the above request and would appreciate hearing from you with regard to whether Petitioners will likewise give their consent.

We look forward to hearing from you.

Very truly yours,

ROYSTON, RAYZOR,
VICKERY & WILLIAMS

By: /s/ JAMES PATRICK COONEY
James Patrick Cooney

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INTEREST OF AMICUS CURIAE

Amicus Curiae Shell Oil Company (Shell) is a corporation which has exported goods and services abroad and from time to time finds itself a party to litigation based on claims by foreign citizens. During the last five years, Shell has had first hand experience with a group of Costa Rican litigants who have repeatedly sought to litigate their claims in the United States. The repetitive reargument of essentially the same forum non conveniens issue in four different state and federal courts continues and has cost Shell significant expense, state and federal courts throughout the United States have experienced unnecessary disruption of their dockets, and has delayed

the resolution of the claims of these Costa Rican banana workers while they have pursued the allure of litigating their claims in the United States for over five years. For the reasons explained below, this Court could end muddles such as these and encourage prompt resolution of whether international claims should be brought in the United States as opposed to the appropriate foreign forum.

This amicus brief is being filed with the consent of the parties, whose letters of consent have been filed with the Clerk of the Court.

SUMMARY OF THE FACTS IN A SERIES OF LAWSUITS BETWEEN COSTA RICAN BANANA WORKERS AND DOW CHEMICAL COMPANY AND SHELL OIL COMPANY

The history of litigation between a group of Costa Rican banana workers employed by Standard Fruit Company in Costa Rica and Shell Oil Company and Dow Chemical Company illustrates the compelling need for a national forum non conveniens standard and for a dismissal based on that standard to be given preclusive effect throughout the United States. On May 3, 1983, fifty-eight plaintiff Costa Rican banana workers and their wives filed an initial action in Dade County Circuit Court in Florida. None of these plaintiffs were residents of Florida; the cause of action arose not from exposure to a product in Florida but from claimed exposure to a chemical 1,2 dibromo 3 choloropropane (DBCP) on the Rio Frio Plantation of Standard Fruit Company in Costa Rica; moreover, neither Dow nor Shell were incorporated in Florida nor had their principal place of business in Florida. After the case was removed from Florida Circuit Court, Shell pursuant to 28 U.S.C. § 1404 filed a Motion to Transfer to the United States District Court for the Eastern District of Michigan simultaeously with a Motion to Dismiss on the basis of forum non conveniens. *Sibaja, et al. v. Dow Chemical, et al.*, No. 83-14798, 11th Circuit Court, Dade County, Fla. See Appendix A and Appendix B of this brief. The District Court for the Southern District of Florida never ruled on Shell's Motion to Transfer, thereby denying it *sub silentio*. Judge King considered plaintiffs' arguments that forum non conveniens was not recognized in Florida (a position to which defendants objected) and that under *Erie Railroad v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817, 82 L.Ed 1188 (1938), the more restrictive Florida rule governing forum non conveniens should govern the United States District Court's consideration of forum non conveniens and granted defendants' Motion to Dismiss on the basis of forum non conveniens. See, Appendix C of this brief. The Eleventh Circuit Court of Appeals reviewed the District Court's forum non conveniens analysis as well as the *Erie* question and affirmed the lower court's opinion. *Sibaja, et al. v. Dow Chemical Company, et al.*, 757 F.2d 1215 (11th Cir. 1985). The plaintiffs filed a Petition for Certiorari to this Court which was denied. *Sibaja et al. v. Dow Chemical Company, et al.*, cert. denied 474 U.S. 948, 106 S.Ct. 347 (1985).

On April 11, 1984, while the *Sibaja* case was pending on appeal, eighty-two new and distinct Costa Rican banana workers from the same Rio Frio Plantation of Standard Fruit Company in Costa Rica represented by the same attorneys filed suit in Harris County District Court in Houston, Texas alleging almost identical claims against

three defendants: Dow, Shell, and Amvac Chemical Company (Amvac). *Alfaro, et al. v. Dow Chemical Company, et al.*, No. 84-17171, 61st Dist. Ct., Harris County, Texas. See, Appendix D of this brief. Dow removed the case to the Federal District Court for the Southern District of Texas on May 21, 1984. The Federal District Court remanded the case to Harris County District Court on November 30, 1984.

After the remand to Harris County District Court, both plaintiffs and defendants initiated vigorous discovery on the forum non conveniens issues. The detailed history of the *Alfaro* case discovery illustrates that the problems a domestic defendant faces of conducting discovery against foreign parties are not hypothetical but are real and demanding. This brief discussion illustrates the lengthy amount of time needed to obtain minimal discovery from foreign plaintiffs on a narrow issue in the litigation. After the case was remanded to Harris County District Court, Shell filed certain discovery requests on each plaintiff on November 14, 1985, in order to determine the factual basis for the Texas Court's jurisdiction. The plaintiffs filed a Motion for a Protective Order to this discovery on December 20, 1985. The District Court entered an Order compelling the plaintiffs to answer this discovery on February 28, 1986. An additional set of discovery directed toward jurisdictional issues was served on each plaintiff on February 3, 1986. On May 13, 1986, Shell filed a Motion for Imposition of Sanctions for failing to comply with the Court's Order of February 28, 1986. The hearing on that motion was cancelled based upon a representation by plaintiffs' attorneys that they would file answers by the time the deposition of a designated witness for Standard Fruit Company was taken.

The answers to those discovery requests had still not been received when that deposition was taken. After some minimal answers were filed by some of the plaintiffs but no answers by many of the plaintiffs, Shell filed a new Motion for Imposition of Sanctions on March 3, 1987. On April 13, 1987, in the face of Shell's Motion for Sanctions, forty-seven of the plaintiffs voluntarily dismissed their claims against the defendants. See Appendix E of this brief. Prior to that time, some of the plaintiffs attempted to cure some of the defects in their discovery responses. At the time the Alfaro case was dismissed by the district court, Shell had a Motion for Sanctions pending against the remaining plaintiffs for failing to have their answers in proper form for a foreign document, for having been filed too late, and for incompleteness. While this history is not directly pertinent to Mrs. Choo's claim, it establishes that burdens faced by defendants in obtaining proof from parties who live in foreign countries let alone third party witnesses are real and not merely hypothetical.

On June 24, 1986, the deposition of the person designated by Sandard Fruit Company as the most knowledgeable about the shipments and transportation of DBCP, was taken in Boca Raton, Florida. The most interesting testimony developed from these efforts was that Shell's DBCP product was never used at the Rio Frio Plantation of Standard Fruit Company and that as of the conclusion of the discovery taken in the *Alfaro* case, no Shell DBCP product had ever been traced to Costa Rica by plaintiffs. The same deposition testimony established that Amvac's DBCP product had reached Costa Rica but had been re-exported. Subsequent to that deposition, the plaintiffs

dismissed Amvac on September 5, 1986 in the *Alfaro* case, but continued to prosecute their case against Shell. Shell believes that the plaintiffs' decision not to dismiss Shell is because to dismiss Shell would make the case susceptible to being removed to Federal Court. On June 22, 1987, after three years of discovery and briefing solely on the forum non conveniens issues, the 61st District Court of Harris County, Texas, dismissed the case on the basis of forum non conveniens. See, Appendix F to this brief. The plaintiffs have appealed that Order to the First Supreme Judicial District of Texas. *Alfaro, et al. v. Dow Chemical Company, et al.*, No. 01-87-00700-CV, First Court of Appeals, Texas.

After the *Alfaro* case had been filed, another group of thirty-four plaintiffs from the same Rio Frio Plantation of Standard Fruit Company represented by the same attorneys sued Dow, Shell, and Amvac in the Superior Court for Los Angeles County, California. Following the deposition of the designated witness by Standard Fruit Co. in the *Alfaro* case, the plaintiffs dismissed Amvac on September 10, 1986. With the dismissal of the California resident from the case, Dow removed the case to the United States District Court for the Central District of California. *Aguilar, et al. v. Dow Chemical Company, et al.*, No. C570052 Los Angeles County Superior Court, California. See Appendix G of this brief. Following the removal, the plaintiffs amended their Complaint to add Dr. Charles Hine and Hine Laboratories, Inc. who are citizens of California. After attempting to add these parties, the plaintiffs filed a Motion to Remand. Judge Davies held the removal proper and granted the defendants' Motion to Dismiss on the basis of forum non conveniens. See, Appendix H to this brief.

The remaining case in this saga was filed on February 4, 1987 in Dade County, Florida. *Cabalceta, et al. v. Standard Fruit Company, et al.*, No. 87-05102, 11th Circuit Court, Dade County, Florida. See Appendix I to this brief. This case was filed on behalf of 212 plaintiffs which included all of the plaintiffs from *Sibaja, Alfaro,* and *Aguilar* plus some thirty-eight additional plaintiffs. In addition, the plaintiffs sued four new parties not named in the prior lawsuits: Standard Fruit Company, Standard Fruit and Steamship Company, Dole Fresh Fruit, and Castle and Cook, Inc., who plaintiffs alleged were residents of Florida. The defendants removed to the United States District Court for the Southern District of Florida. The plaintiffs filed a Motion to Remand arguing that the principal place of business of Standard Fruit Company and Dole Fresh Fruit was Boca Raton, Florida. Standard Fruit Company argued the Court lacked jurisdiction over it and that its principal place of business was other than Florida and Dole Fresh Fruit Company argued that it was a sham defendant.

The Court on July 21, 1987, after considering all the arguments, denied the plaintiffs' Motion for Remand and granted the defendants' Motion to Dismiss on the basis of forum non conveniens. See Appendix J to this brief. As this was the fourth attempt to prosecute a suit in the United States and the second suit for almost all the plaintiffs, the defendants asked the Court for an injunction against the plaintiffs enjoining them from filing any more suits as to these claims in the United States which was denied on October 16, 1987. The defendants who did not contest jurisdiction appealed that denial of the requested injunction to the United States Eleventh Cir-

cuit Court of Appeals for the Eleventh Circuit. *Cabalceta, et al. v. Standard Fruit Company, et al.*, No. 87-5709 (11th Cir. 1987).

ARGUMENT

Shell believes that this Court should determine the question of issue preclusion by judgments of United States District Courts which have granted dismissal under the doctrine of forum non conveniens. The facts of the litigation waged against Shell and Dow for five years by a common group of foreign claimants represented by the same attorneys whose claims arise from the same seminal facts demonstrate how inefficient and injudicious an approach to litigation will be allowed to flourish unless this Court grants the effect of issue preclusion to a ruling of a United States District Court as to forum non conveniens and authorizes federal courts to enforce their rulings through the granting of injunctive relief. This is especially appropriate since the only reason all of these cases are not in federal court is the capriciousness of the removal statute 28 U.S.C. § 1441.

This issue is one which is arising repeatedly in litigation in the United States brought by foreign nationals. See, discussion *supra;* compare *Mizokami Bros. of Arizona, Inc. v. Mobil Chemical Corp.*, 660 F.2d 712 (8th Cir. 1981) with *Fitzgerald v. Texaco, Inc.*, 521 F.2d 448 (2nd Cir. 1975), cert. denied, 423 U.S. 1052 (1976) and *Pastewka v. Texaco, Inc.*, 565 F.2d 851 (3rd Cir. 1977); see also, *In Re Ocean Ranger*, 617 F.Supp. 435 (D.C. La. 1985). The majority view of lower courts appears tc support issue preclusion under concepts of *res judicata, Pastewka v. Texaco, Inc., supra* or collateral estoppel, *In Re Ocean Ranger, supra;* however, one court

has disagreed with these conclusions and recommended a different course of action to achieve the same result, see, *Mizokami Bros. of Arizona, Inc. v. Mobay Chemical Corp., supra.* Shell believes that the practice they followed in *Sibaja, et al. v. Dow Chemical Co., et al., supra,* serves as the model of how these cases can be legitimately reconciled while implementing a sound judicial practice and doing so with a minimal burden on scarce judicial resources.

In *Sibaja,* Shell initially filed a Motion to Transfer the case pursuant to 28 U.S.C. § 1404(a) in conjunction with its Motion to Dismiss on the grounds of forum non conveniens which the District Court overruled *sub silentio.* See Appendix B to this brief. This request for transfer was similar to the transfer that was actually granted in *Alexander, et al. v. Richardson, Merrill, Inc.*, 541 F.Supp. 93, 96-99 (1982) and *In Re Richardson-Merrill, Inc.*, 545 F.Supp. 1130 (S.D. Ohio 1982). While not precisely handling the issue in this fashion, the Court in *Mizokomi Brothers of Arizona, Inc. v. Mobay Chemical Corp., supra* at 717-719 seems to recommend this course of action. Shell believes that the most convenient forum in the United States is established by one of three express or implied methods: (1) where foreign plaintiffs have selected a forum and the defendant does not object and the District Court accepts the venue of the case, as to that case that forum should be deemed the most convenient forum in the United States; e.g., *Sibaja, et al. v. Dow Chemical Co., et al., supra;* (2) where a case is transferred to a Federal District Court pursuant to 28 U.S.C. § 1404, that Court has been determined to be the most convenient in the United States, e.g., *In Re Richardson-Merrill, Inc., supra;* or (3) where the multi-district

litigation panel has transferred a body of litigation to a certain Court, that Court should be deemed the most convenient forum in the United States, e.g., *In Re Union Carbide Gas Plant Disaster at Bhopal, India,* 809 F.2d 195 (2nd Cir. 1987). Once the most convenient forum in the United States has been established by implied agreement or judicial order, then that forum can apply the public and private interest factors set out in *Gulf Oil Corporation v. Gilbert,* 330 U.S. 501, 67 S. Ct. 839, 91 L. Ed. 1055 (1947), and reiterated and extended in *Piper Aircraft Company v. Reyno,* 454 U.S. 235, 102 S. Ct. 252, 70 L.Ed.2d 419 (1981), reh. den. 455 U.S. 928, 102 S. Ct. 1296 (1982).

In the event the case is dismissed under forum non conveniens based upon those factors, then the determination has been made that the foreign forum is superior to the most convenient forum in the United States. That determination should not be subject to repetitive relitigation in the federal or state courts of the United States when the most appropriate court to address the issue of forum non conveniens has determined that the foreign forum is better than the most convenient forum in the United States.

The remaining issue to be resolved by this Court is whether that determination can then be enforced by an injunction against litigation by plaintiffs in state court and/or the state courts themselves under the All Writs Statute, 28 U.S.C. § 1651, and is not barred from doing so under the Anti-Injunction Act, 28 U.S.C. § 2283.

Shell believes that federal courts should be empowered to issue injunctions such as the one issued by the District Court in *Exxon Corp. v. Chick Kam Choo, supra,* in order to effectuate the terms of a District Court's Order

of Dismissal. There is limited authority on this issue and to the extent that it exists it was thoroughly discussed in *Exxon Corp. v. Chick Kam Choo,* 817 F.2d 307 (5th Cir. 1987). However, the Court of Appeals For the Fifth Circuit below and Professors Wright and Miller have articulated the belief that if the forum non conveniens issue remains essentially the same between the federal court and the state court, an order of dismissal on the basis of forum non conveniens is the equivalent of a judgment and issue preclusion is appropriate. See *Exxon Corp. v. Chick Kim Choo, supra,* and 18 C. Wright, A. Miller, E. Cooper, Federal Practice and Procedure: Jurisdiction § 4226, at 346 (1981). Rule 54, Federal Rules of Civil Procedure, defines a judgment as "a decree and any order from which an appeal can be taken." Congress passed 28 U.S.C. § 2283 just after Rule 54, Federal Rules of Civil Procedure, had been promulgated. There is every reason to believe that Congress when it passed the Anti-Injunction Act in the same year was using the term "judgment" with the same meaning as defined in Rule 54, Federal Rules of Civil Procedure. The Rule 54 definition would clearly encompass orders of dismissal. A dismissal on forum non conveniens is even more appropriately within that definition because except for the oddity of 28 U.S.C. § 1441 which does not permit removal if a defendant is a citizen of the state in which the action is brought, all cases between foreign plaintiffs and American defendants would be in federal court on the basis of diversity of citizenship. Essentially as suggested by Shell, the determination by the most convenient forum within the United States that the United States is not a convenient forum would be a final judgment that foreign plaintiffs could have no recovery *in the United*

States. That construction promotes finality of judicial determinations because it would preclude efforts by plaintiffs to manipulate the naming of defendants to avoid removal under diversity jurisdiction in order to avoid the preclusive effect of a federal court's determination of forum non conveniens. Shell's suggested interpretation which equates an order of dismissal with a final judgment is consistent with the few cases to attempt to define judgment in the context of 28 U.S.C. § 2283. *Sperry Rand Corp. v. Rothkin,* 288 F.2d 245 (2nd Cir. 1961).

An analysis of the forum non conveniens factors shows that there should be scant difference between federal courts and state courts on this issue. In *Gulf Oil Corp. v. Gilbert, supra,* the private factors to be considered were:

1. The relative ease of access to proof—this factor is the same in state and federal courts. It is arguable that ease of access to proof in a foreign forum is better in federal court than state court.
2. Availability of compulsory process for attendance of unwilling witnesses. This factor is the same in state and federal courts. Just as is the case with the first factor it is probably better in federal courts.
3. The cost of obtaining willing witnesses. This factor is the same in state and federal courts.
4. Possibility of a view of the premises. This factor is the same in state and federal courts.
5. All other practical problems. There is no reason to believe these would be different in state courts from federal courts.

In Gulf Oil Corp. v. Gilbert, supra, the public factors to be considered are:

1. Congestion of the Courts—This is potentially a different issue in state court than in federal court but in practical terms it is probably about the same in state and federal courts in the same geographic location. Formal analysis may suggest that it is actually better in the Federal Courts which in many jurisdictions are less congested; therefore, if the case adversely affects the congestion of the federal court docket it would create an even worse situation in state courts.
2. Imposition of jury duty on a forum which has no relation to the litigation. This is the same in state and federal courts.
3. The difficulty of applying foreign law. This is the same in state and federal courts and may be worse in state courts because they generally have less staff to analyze foreign law and to make translations if required.

Even a cursory review of the *Gilbert* factors shows that the case issues between state and federal court are essentially the same. Accordingly issue preclusion is in order as this is the kind of issue preclusion that the *Pastewka* Court felt was covered by the Restatement of Judgments in § 13 and to which Professors Wright and Miller felt that issue preclusion should apply.

CONCLUSION

Shell submits that this Court should apply a scheme whereby the most convenient forum in the United States should decide the initial forum non conveniens issue and then that Court should be allowed to effectuate its judgment through an injunction.

Respectfully submitted,

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Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all counsel of record by placing same in the United States mail, postage prepaid and properly addressed, this 17th day of February, 1988.

Burt Ballanfant

BURT BALLANFANT

APPENDIX

APPENDIX A

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

CASE NO. 83-14798

PLAINTIFFS' ORIGINAL COMPLAINT
JURY TRIAL DEMANDED

SAUL MUNOZ SIBAJA and
RAFAELA ARRIETA PORRAS,

ROBRETO CERDA AGUILAR and
SINAI TORRES ROSALES,

VICENTE FLORES VALVERDE and
MARIA MAYELA VEGA FIGUREROA,

BOLIVAR ARIAS MORA,

ALFONSO CAMPOS RODRIGUEZ and
MARIA JIMENEZ BENAVIDES,

JUAN BAUTISTA VASQUEZ and
MARIA ISABEL CHAVARRIA SALAS,

VICTOR SOLIS ROJAS and
ROSA BADILLA PEREZ,

MIGUEL CHAVARRIA ZUNIGA,

JOAQUIN ZAMORA ARRIETA

TACITO CAMPOS GARCIA and
YAMILETH NURIS VILLEGAS DIAZ,

SEGUNDO RODRIGUEZ RODRIGUEZ and
MARY ELIZONDO UMANA,

ELIECER ACOSTA MONTERO and
EMMA JIMENEZ RAMIREZ,

MANUEL CHAVES NUNEZ and
MIREYA RODRIGUEZ RODRIGUEZ,

CARLOS GARITA SANDI and
MELITINA GONZALES,

EDWIN GOMEZ CASTRILLO and
ODILI TORRES ACUNA,

MAGIN FERNANDEZ GARCIA and
PAULA CORTEZ GOMEZ,

NEFTALI ARAYA GARITA and
LEDA ESPINOZA GAMBOA,

MARGARITO ZUNIGA GUTIERREZ and
ANAIS SANCHEZ ROJAS,

DANIEL LORIA MORERA and
PETRA BERTA NAVARRETE TORRES,

MIGUEL ZUNIGA PENA and
MARIA DE LA CRUZ GONZALES GONZALES,

ISAIAS SANCHEZ RIVERA and
FIDELIA ALVARADO SOLORZANO,

AUGUSTO LEITON RODRIGUEZ and
MERCEDES RODRIGUEZ ARRIETA,

ANGEL LOBO ROJAS and
MARGOT VARELA RAMIREZ,

CASAMIRO LOPEZ SANDOVAL and
ALEJANDRINA VEGA VILLALOBOS,

JOSE SOSSA SOSSA and
FLORY ALFARO JIMENEZ,

ANTONIO GUTIERREZ ZUMBADO and
MARIA DE LOS ANGELES,

GERARDO PERAZA GARRO and
NELLY UMANA ARIAS,

ELIAS HERNANDEZ BADILLA,

BENEDICTO CAMPOS CORRALES,

MARIO SOLANO JIMENEZ,

BOLIVAR ARIAS MORA,

PEDRO JIMENEZ MURILLO,

JOSE GAMBOA RODRIGUEZ,

RODRIGO GARITA SANDI,

versus

DOW CHEMICAL COMPANY and
SHELL OIL COMPANY

COME NOW Plaintiffs, and files this their Original Complaint against the Defendants and allege as follows:

1. This is an action for damages in excess of the sum of Five Thousand and No/100 ($5,000.00) Dollars.

2. Plaintiffs are citizens and residents of Costa Rica. The Defendants are doing business in, and are residents of Dade County, Florida. Therefore, venue is proper in Dade County under F.S.A. § 47.051.

3. Defendant DOW CHEMICAL COMPANY is a Delaware corporation qualified to transact business in the State of Florida. Service of process on such Defendant is predicated on F.S.A. § 48.081(3) and F.S.A. § 48.091. Defendant's resident agent for service of process pursuant

to § 48.091 is C. T. Corporation System, 8751 W. Broward Boulevard, Plantation, Florida 33324.

4. Defendant SHELL OIL COMPANY is a Delaware corporation qualified to transact business in the State of Florida. Service of process on such Defendant is predicated on F.S.A. § 48.081(3) and F.S.A. § 48.091. Defendant's resident agent for service of process pursuant to § 48.091 is C. T. Corporation System, 8751 W. Broward Boulevard, Plantation, Florida 33324.

5. This cause of action is predicated on products liability theories of strict liability, implied warranty and negligence, as more specifically alleged herein. The products complained of are nematocides containing the chemical dibromochloropropane, commonly known as DBCP. The product manufactured, sold and distributed by the Defendant DOW CHEMICAL COMPANY is marketed under the trade name "Fumizone." The product manufactured by the Defendant SHELL OIL COMPANY is marketed under the trade name "Nemagon."

6. Plaintiffs SAUL MUNOZ SIBAJA, ROBERTO CERDA AGUILAR, VICENTE FLORES VALVERDE, BOLIVAR ARIAS MORA, ALFONSO CAMPOS RODRIGUEZ, JUAN BAUTISTA VASQUEZ, VICTOR SOLIS ROJAS, MIGUEL CHAVARRIA ZUNIGA, JOAQUIN ZAMORA ARRIETA, TACITO CAMPOS GARCIA, SEGUNDO RODRIGUEZ RODRIGUEZ, ELIECER ACOSTA MONTERO, MANUEL CHAVES NUNEZ, CARLOS GARITA SANDI, EDWIN GOMEZ CASTRILLO, MAGIN FERNANDEZ GARCIA, NEFTALI ARAYA GARITA, MARGARITO ZUNIGA GUTIERREZ, DANIEL LORIA MORERA, MIGUEL ZUNIGA PENA, ISAIAS SANCHEZ

RIVERA, AUGUSTO LEITON RODRIGUEZ, ANGEL LOBO ROJAS, CASIMIRO LOPEZ SANDOVAL, JOSE SOSSA SOSSA, ANTONIO GUTIERREZ ZUMBADO, GERARDO PERAZA GARRO, ELIAS HERNANDEZ BADILLA, BENEDICTO CAMPOS CORRALES, MARIO SOLANO JIMENEZ, PEDRO JIMENEZ MURILLO, JOSE GAMBOA RODRIGUEZ, RODRIGO GARITA SANDI, allege that they were exposed to Fumizone and Nemagon and, as a result thereof, have suffered serious and permanent personal injuries including, but not limited to, loss of reproductive function.

NEGLIGENCE

7. The illnesses and disabilities of said Plaintiffs are a direct and proximate result of the negligence of each Defendant in that said Defendants produced, sold and/or otherwise put into the stream of interstate and international commerce, DPCP-containing materials which the Defendants knew, or in the exercise of ordinary care ought to have known, were deleterious and highly harmful to said Plaintiffs' health and well being. The Defendants were negligent in one, some and/or all of the following respects, among others, same being the proximate cause of said Plaintiffs' illnesses and disabilities:

(a) In failing to adequately warn Plaintiffs of the dangerous characteristics of DBCP;

(b) In failing to provide Plaintiffs with information as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if in truth there were any, to protect Plaintiffs from being harmed and disabled by exposure to DBCP;

(c) In failing to place adequate warnings on the containers of said DBCP-containing materials to warn of the dangers to health of coming into contact with said DBCP;

(d) In failing to take reasonable precaution or exercise reasonable care to publish, adopt and enforce a safety plan and a safe method of handling and applying DBCP;

(e) In failing to develop and utilize a substitute material for DBCP in the aforesaid nematocides;

(f) In failing to test DBCP prior to releasing these products for sale; and

(g) In conceaning the results of any tests conducted on DBCP by Defendants, if in fact either Defendant ever tested its DBCP-containing products.

STRICT LIABILITY

8. All of the allegations contained in the previous paragraphs are realleged herein.

9. The DBCP-containing products that were used and applied by Plaintiffs were designed and manufactured by Defendants and subsequently sold, directly and indirectly, to the various employers of Plaintiffs. Said products left the hands of Defendants in a defective and unreasonably dangerous condition in the following respects:

(a) said DBCP-containing products did not contain an adequate and timely warning regarding the serious health health hazards associated with DBCP;

(b) said products did not contain an adequate and timely warning to the effect that protective equipment should be used when working with DBCP;

(c) said products were defectively designed in that they contained DBCP although a substitute for this chemical was available at all times material to this litigation.

(d) said products were defectively designed in that they did not contain an adequate and timely warning concerning the hazards of DBCP and the need for safety precautions when using DBCP;

(e) said products were unreasonably dangerous *per se*.

10. Each Defendant is and/or was engaged in the business of manufacturing and/or distributing such DBCP-containing products and these products, without substantial change in condition after they were sold, were a producing cause of the damages sustained by Plaintiffs.

11. Plaintiffs were unaware of the dangerous propensities of the products which rendered them unsafe for their intended use. Plaintiffs used the aforementioned products in a manner that was reasonably anticipated by the Defendants. Further, during the periods that said Plaintiffs were exposed to the products of the Defendants, said products were being utilized in a manner which was intended by Defendants.

IMPLIED WARRANTY

12. All of the allegations contained in the previous paragraphs are realleged herein.

13. The Defendants impliedly warranted that their DBCP-containing products were of good and merchantable quality and fit for their intended use.

14. The Plaintiffs would show that they worked in close proximity to the DBCP-containing products of the Defendants and their presence was known or ought to have

been reasonably anticipated by the Defendants. The implied warranty made by the Defendants that their aforesaid products were of a good and merchantable quality and were fit for their particular intended use was breached in that Plaintiffs' work with Defendants' products caused them to be exposed to DBCP and to be injured as a proximate result thereof.

EXEMPLARY DAMAGES

15. The Plaintiffs would show that the damages incurred as described herein were directly and proximately caused by the willful, malicious and intentional commission and omissions, conscious indifference, and utter disregard for the welfare of the said Plaintiffs on the part of the Defendants herein, their agents, servants, employees, managers, superintendants, supervisors, and officers in that they ignored and concealed evidence available to them which indicated that DBCP and DBCP-containing materials were harmful and deadly to persons coming in contact with said materials. Consequently, users of DBCP-containing products, such as Plaintiffs, were deprived of the opportunity of free choice as to whether or not to expose themselves to the DBCP-containing products manufactured by Defendants. Plaintiffs would show that as a result of the conduct of Defendants as aforesaid, they should be awarded an amount that would punish Defendants and act as a deterrent to Defendants and others from the commission of similar wrongs.

COMPENSATORY DAMAGES

16. As a direct and proximate result of Defendants tortious conduct as aforesaid, Plaintiffs, SAUL MUNOZ SIBAJA, ROBERTO CERDA AGUILAR, VICENTE

FLORES VALVERDE, BOLIVAR ARIAS MORA, ALFONSO CAMPOS RODRIGUEZ, JUAN BAUTISTA VASQUEZ, VICTOR SOLIS ROJAS, MIGUEL CHAVARRIA ZUNIGA, JOAQUIN ZAMORA ARRIETA, TACITO CAMPOS GARCIA, SEGUNDO RODRIGUEZ RODRIGUEZ, ELIECER ACOSTA MONTERO, MANUEL CHAVES NUNEZ, CARLOS GARITA SANDI, EDWIN GOMEZ CASTRILLO, MAGIN FERNANDEZ GARCIA, NEFTALI ARAYA GARITA, MARGARITO ZUNIGA GUTIERREZ, DANIEL LORIA MORERA, MIGUEL ZUNIGA PENA, ISAIAS SANCHEZ RIVERA, AUGUSTO LEITON RODRIGUEZ, ANGEL LOBO ROJAS, CASIMIRO LOPEZ SANDOVAL, JOSE SOSSA SOSSA, ANTONIO GUTIERREZ ZUMBADO, GERARDO PERAZA GARRO, ELIAS HERNANDEZ BADILLA, BENEDICTO CAMPOS CORRALES, MARIO SOLANO JIMENEZ, PEDRO JIMENEZ MURILLO, JOSE GAMBOA RODRIGUEZ, RODRIGO GARITA SANDI, have developed sexual and reproductive abnormalities and other related conditions and have been damaged in the following particulars for all of which suit is herein brought:

(a) Said Plaintiffs have suffered great physical pain and mental anguish and will continue to suffer great pain of body and mind throughout their lifetime;

(b) Plaintiffs have incurred and will continue to incur hospital, medical, pharmaceutical and other expenses in the future due to their exposure to Defendants' aforesaid products;

(c) Plaintiffs suffer an extraordinarily increased likelihood of developing cancer as a result of their exposure to DBCP-containing products manufactured, sold and/or distributed by the named Defendants;

(d) Plaintiffs suffer an extraordinarily increased risk of genetic damage as a result of their exposure to Defendants' aforesaid products;

(e) Plaintiffs will suffer a loss of earning capacity due to their exposure to said DBCP-containing products;

(f) Plaintiffs will incur expenses for domestic help and nursing care in the future due to their exposure to Defendants' aforesaid products;

(g) Plaintiffs have lost the capacity to enjoy a full and normal life and will continue to suffer such loss in the future due to their exposure to Defendants' aforesaid products;

(h) Plaintiffs, SINAI TORRES ROSALES, ODILI TORRES ACUNA, PAULA CORTEZ GOMEZ, YAMILETH NURIS VILLEGAS DIAS, LEDA ESPINOZA GAMBOA, NELLY UMANA ARIAS, ANAIS SANCHEZ ROJAS, EMMA JIMENEZ RAMIREZ, PETRA BERTA NAVARRETE TORRES, MIREYA RODRIGUEZ RODIGUEZ, MARIA DE LA CRUZ GONZALEZ GONZALEZ, FIDELIA ALVARADO SOLORAZANO, MARIA JIMENEZ BENAVIDES, MERCEDES RODRIGUEZ ARRIETA, MARY ELIZONDO UMANA, MARGOT VARELA RAMIREZ, ROSA BADILLA PEREZ, MELITINA GONZALES, ALEJANDRINA VEGA VILLALOBOS, RAFAELA ARRIETA PORRAS, FLORY ALFARO JIMENEZ, MARIA MAYELA VEGA FIGUREROA, MARIA ISABEL CHAVARRIA SALAS and MARIA DE LOS ANGELES, have suffered and will continue to suffer the loss of their husbands' services, consortium, financial support and the care and comfort of their society because of their said injuries and disabilities, and said wives will incur expenses for

medical and nursing attention rendered to their said husbands in the future.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment against the Defendants, and each of them, jointly and severally, for general and special damages and punitive damages, for their costs expended herein, and for interest on said judgment from the date thereof until paid, at the legal rate, and for such other and further relief, both at law and in equity, to which the Plaintiffs may show themselves justly entitled.

Respectfully submitted,

FREDERICK M. BARON &
ASSOCIATES
A Professional Corporation
1050 Dallas Fed. Savings Tower
Dallas, Texas 75225
(214) 369-3605

By: /s/ RUSSELL W. BUDD
Russell W. Budd

AND

ROBLES & ROBLES
Attorneys at Law
Suite 401
75 S.W. 8th Street
Miami, Florida 33130

By: ,'s/ LOUIS S. ROBLES
Louis S. Robles

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 83-14798

SAUL MUNOZ SIBAJA and
RAFAELA ARRIETA PORRAS, et al.,
Plaintiffs,

v.

DOW CHEMICAL COMPANY and
SHELL OIL COMPANY,
Defendants.

COMES NOW, MANUEL QUINTANA, duly appointed process server in the above referenced case and files this his Affidavit of Service of the following items:

Complaint and Summons

Copy of Notice of Serving Interrogatories to DOW CHEMICAL COMPANY and SHELL OIL COMPANY. An Original and one copy of First Set of Interrogatories served on SHELL OIL COMPANY. One copy of Interrogatories served on DOW CHEMICAL COMPANY.

in the above captioned cased on, SHELL OIL COMPANY, and states:

1. That a copy of the foregoing items came into his hand on the 3rd day of May, 1980, and that he executed the same in Broward County, Florida at 1:35 P.M. on 5-3-83, by delivering a true copy of the original thereof

with date and hour of service thereon to: C.T. Corporation System, 8751 W. Broward Blvd., Plantation, Florida.

/s/ MANUEL QUINTANA

/s/ SUSANA SIVES
Notary Public

Subscribed and sworn to before me
this 3rd day of May, 1983.

My Commission Expires:

Notary Public State of Florida at Large
My Commission Expires Nov. 19, 1984
Bonded thru General Ins. Underwriters

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT
OF FLORIDA

CASE NO. 83-1347-Civ-JLK

SAUL MUNOZ SIBAJA and
RAFAELA ARRIETA PORRAS, et al.,
Plaintiffs,

v.

DOW CHEMICAL COMPANY and
SHELL OIL COMPANY,
Defendants.

MOTION TO DISMISS OR, IN ALTERNATIVE,
MOTION TO TRANSFER

COMES NOW the Defendant, SHELL OIL COMPANY, by and through its undersigned counsel, and files this Motion to Dismiss on the ground of forum non-conveniens and in the alternative files this further Motion to Dismiss for improper venue pursuant to § 1404(a) of Title 28 USC. The factors supportive of these alternative motions will be hereinafter set forth and supported by affidavits submitted herewith, if available, or to be followed as promptly as possible if currently unavailable. The determinative factors supportive of both motions are generally similar in nature, both in relationship to the private interest of the parties and the public interest. Such factors, as applied to the subject litigation, reflect the following:

1. Each individual plaintiff (exclusive of those who may be asserting derivative claims only) was allegedly exposed to one or both products complained of in Costa Rica, and alleges resulting injuries or damages occurring in Costa Rica. Each plaintiff is a citizen and resident of Costa Rica and an alien with respect to the United States.

2. Relevant and significant factors in the defense of the subject cause will include the following:

a. Identification of the particular product in use.

b. The place of alleged exposure, i.e. marketing, transportation, distribution or use.

c. Method of application and resulting exposure, i.e. use, inadvertent exposure through employment or as bystander.

d. Awareness of and/or reaction to warnings as to proper and appropriate use.

e. Causation between exposure and alleged injuries or damages.

f. Use of protective devices.

3. The foregoing factual circumstances will be determined by witnesses in the nature of the plaintiffs themselves, vendors and purchasers of the alleged product, employers, supervisors, co-employees, treating or examining physicians, hospital personnel, families and friends, all of whom are residents of Costa Rica.

4. Critical to portions of the foregoing factual circumstances will be documentary evidence in the nature of shipping records, purchase records, business records of employers, medical records and hospital records, all of which are situated, if available, in Costa Rica.

5. That compulsory process to obtain any and all of the foregoing evidence, through deposition, production or appearance at trial, is available only in Costa Rica and would be unavailable in the Southern District of Florida.

6. That were such evidence available through the voluntary appearances of potential witnesses in the Southern District of Florida, the cost involved therein would be significant and substantial if not prohibitive.

7. That those witnesses relating to the production, marketing and sale of the involved product at the principal place of business of this Defendant in Houston, Texas, will be as readily available to a forum within Costa Rica as Miami, Florida, at no greater if not less cost and expense.

8. That documentary production, as required, from this Defendant's principal place of business can be accomplished with equal ease and practicality within Costa Rica as Miami, Florida.

9. That this cause will be governed by the laws of Costa Rica pursuant to the Florida significant contact principle with which laws the courts of Costa Rica have far greater familiarly.

10. That the public interest relating to the Southern District of Florida with respect to the congestion of the docket and burdens upon local citizens serving as jurors are contraindicative to the resolution of disputes arising in foreign countries between aliens or citizens of a foreign country and citizens of states other than Florida.

11. That both Defendants are subject to and/or will submit to the jurisdiction of the judicial system within Costa Rica.

12. That the judicial system of Costa Rica recognizes both joint and several liability as to all joint tortfeasors including vicarious liability for acts of agents and employees and including strict liability of owners or operators of industrial facilities and further provides for the award of compensatory damages arising from either an intentional or negligent tort.

13. That in the defense of the subject litigation, pursuant to the potential liability of other parties in the nature of distributors, employers, supervisors or other persons or entities who may have a legal liability to one or more of the plaintiffs herein referable to their alleged use and/or exposure of the subject products, third party claims for contribution may well exist and can be asserted only through process issued and served in Costa Rica pursuant to the Costa Rican judicial system where such potential third party defendants reside and where the alleged causes of action supportive of such third party claims accrued.

Based on the foregoing factors, it affirmatively and clearly appears that the *private interests* of the parties, witnesses and this court including access to sources of proof, availability of compulsory process for attendance of unwilling witnesses, service of third-party claims, costs of obtaining attendance of willing witnesses and familiarity with applicable law require that this cause be dismissed and litigated in Costa Rica, and the *public interests* relating to the congested docket of this Court and resulting local burden upon the citizenry of this district with respect to jury service require the dismissal of this cause.

Were this Court to deny the foregoing Motion to Dismiss or defer ruling thereon, as an alternative, this De-

fendant urges, pursuant to § 1404(a) of Title 28 USC, a transfer of this cause to U.S. District Court for the Eastern District of Michigan, Northern Division, upon the following grounds:

1. This action could have been brought in this proposed transferee forum in that the Defendant, DOW, has its principal place of business and is doing business therein, and the Defendant, SHELL is engaged in and doing business within the District.

2. That sources of proof in the nature of witnesses and documentary evidence of DOW pertaining to its product and the marketing thereof is available within the transferee district and will be more readily accessible than the Southern District of Florida.

3. That witnesses and documentary evidence pertaining to SHELL'S product although primarily within the State of Texas at its principal place of business in Houston will be equally available within the transferee district as within the Southern District of Florida.

4. The choice of law rule within the State of Florida is predicated upon the significant contact principle and pursuant thereto, the law of Costa Rica will apply. The transferee district will be equally capable of applying such foreign law as would the Southern District of Florida.

5. That the Southern District of Florida bears absolutely no relationship whatsoever to the cause of action, contains neither witnesses nor documents referable to the products involved herein or the alleged damage resulting from their use and would require all witnesses and all documentary evidence to be produced at a locale far

removed from the location of either such witnesses or documents.

6. The court docket of the Southern District of Florida in the nature of the known congestion is contraindicative to the resolution of this dispute between citizens and residents of a foreign country and corporations with their principal places of business within the States of Michigan and Texas.

7. That the community of South Florida from which jurors would be drawn for any trial of the subject protracted litigation has absolutely no relationship to the dispute, and it would be an undue burden to impose upon such community a trial of the obvious duration that would be required in a complex product liability case of this nature involving 58 claimants.

Based on the foregoing factors, it affirmatively and clearly appears as between the Southern District of Florida and the Eastern District of Michigan that the private interests of the parties, witnesses and the court including access to sources of proof, availability of compulsory process for attendance of unwilling witnesses, costs of obtaining attendance of willing witnesses and familiarity with applicable law requires that this cause be transferred to the Eastern District of Michigan and the public interests relating to the congested docket of this Court and the resulting local burden that would be imposed upon the citizenry of this district absent any local interest in the dispute whatsoever further requires the transfer of this cause to the Eastern District of Michigan.

WE HEREBY CERTIFY that a copy of the above and foregoing was mailed this 2nd day of June, 1983, to the attorneys on the attached list.

FOWLER, WHITE, BURNETT,
HURLEY, BANICK &
STRICKROOT, P.A.
Attorneys for Shell Oil Co.
25 W. Flagler St.
Miami, Florida 33130
(305) 358-6550

By: /s/ HENRY BURNETT
Henry Burnett

STATE OF FLORIDA)
: SS:
COUNTY OF DADE)

BEFORE ME, the undersigned authority personally appeared, HENRY BURNETT, who, being duly sworn deposes and says:

1. That he is a member of the firm of FOWLER, WHITE, BURNETT, HURLEY, BANICK & STRICKROOT, P.A., attorneys of records for SHELL OIL COMPANY herein, and upon information and belief, the factual information set forth above is true and correct.

FURTHER AFFIANT SAYETH NOT.

/s/ HENRY BURNETT
Henry Burnett

Sworn to and subscribed
before me this 2nd day
of June, 1983.
/s/ GLORIA M. KIGUES
NOTARY PUBLIC, State of
Florida at Large

My Commission Expires: February 5, 1984.

Bonded thru Maynard Bonding Agency

LIST OF COUNSEL

Frederick M. Baron, Esq.
FREDERICK M. BARON & ASSOCIATES
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Attorneys for Plaintiffs

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Attorneys for Plaintiffs

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116 West Flagler Street
Miami, Florida 33130

Attorney for Defendant, DOW CHEMICAL CO.

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT
OF FLORIDA

CASE NO. 83-1347-Civ-JLK

SAUL MUNOZ SIBAJA and
RAFAELA ARRIETA PORRAS, et al.,
Plaintiffs,

v.

DOW CHEMICAL COMPANY and
SHELL OIL COMPANY,
Defendants.

AFFIDAVIT

STATE OF FLORIA)
ss.
COUNTY OF DADE)

CHARLES G. DeLEO, a member of the law firm of Fowler, White, Burnett, Hurley, Banick & Strickroot, P.A., gives the following Affidavit:

I, CHARLES G. DeLEO, swear that I am an attorney, educated in civil law, having studied law in a civil law jurisdiction. I have personally researched the laws of Costa Rica, and translated them from Spanish to English. I am both fluent in Spanish, and have familiarity with the legal systems of the Latin American States, having been employed by a law office in Latin America. I am currently a member of the Florida Bar.

I have reviewed the motion and memorandum of Shell Oil Company to dismiss or in the alternative to transfer, said motion dated June 2, 1983, and the representations therein pertaining to the fact and substance of Costa Rican law are true and accurate.

/s/ CHARLES G. DeLEO
Charles G. DeLeo

SWORN TO AND SIGNED in my presence this 2nd day of June, 1983.

/s/ SUSAN A. WAXMAN
NOTARY PUBLIC,
State of Florida

My commission expires: September 9, 1988.

Bonded thru Maynard Bonding Agency

CERTIFICATE OF SERVICE

WE DO HEREBY CERTIFY that a true and correct copy of the above and foregoing Affidavit of Charles G. DeLeo was mailed this 2nd day of June, 1983, to: Frederick M. Baron, Esq., Frederick M. Baron & Assoc., 1050 Dallas Federal Savings Tower, Dallas, Texas 75225; Louis S. Robles, Esq., Robles & Robles, Suite 401, 75 S.W. 8th Street, Miami, Florida 33130 and Edward Corlett, Esq., 116 West Flagler Street, Miami, Florida 33130.

FOWLER, WHITE, BURNETT,
HURLEY, BANICK &
STRICKROOT, P.A.
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501 City National Bank Building
25 West Flagler Street
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TEL: 305/358-6550

By: _____
Thomas F. Martin

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 83-1347-CIV-JLK

SAUL MUNOZ SIBAJA and
RAFAELA ARRIETA PORRAS, et al.,
Plaintiffs,

v.

DOW CHEMICAL COMPANY and
SHELL OIL COMPANY

ORDER DISMISSING CAUSE

THIS CAUSE comes before the Court upon the Defendants' Motions to Dismiss.

In support of their motions to dismiss the Defendants have argued that this cause should be dismissed on the ground of forum non conveniens. In support of that argument, they have asserted:

1. that each individual plaintiff was allegedly exposed to the product in question in Costa Rica;

2. that the evidence and witnesses, including all of the 58 Plaintiffs, are primarily located in Costa Rica;

3. that most of this evidence and these witnesses would not be subject to the compulsory process of this Court;

4. that even if such evidence and witnesses were made available voluntarily, the cost involved would be substantial;

5. that the witnesses and evidence within the United States are in places other than the Southern District of Florida and so would be just as obtainable in Costa Rica as in Florida;

6. that the Florida law of conflicts would apply the Costa Rican substantive law, which is in a foreign language unfamiliar to this Court;

7. that this cause of action has no contact with the Southern District of Florida and that the Public interest in providing a forum in Florida is out weighed by the costs of court congestion and jury duty;

8. that the judicial system of Costa Rica does provide a forum and a remedy for the Plaintiffs and both Defendants are subject to the jurisdiction of the Costa Rican judicial system or will submit to that jurisdiction;

9. and, that the application of the doctrine of forum non conveniens is within the sound discretion of the Court.

For support of their argument, the Defendants rely on *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), and *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947).

In their response to the motion to dismiss the Plaintiffs' argue that a major objective of *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), was to avoid the unequal administration of the laws and the forum shopping that had previously been caused by the diversity jurisdiction

of the Federal Courts. The Plaintiffs argue that to facilitate this objective the *Erie* Court attempted to minimize the variations between state and federal law as it would be applied in diversity cases. The argument then asserts that under Florida law this action could not be dismissed on the ground of forum non-conveniens because the Defendants are residents of Florida.

Because the doctrine of forum non-conveniens would not be available in this case if it were in State Court the Plaintiffs' would have this Court distinguish this case from *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), relied on by the Defendants, and then applying the Florida Law of forum non-conveniens. The distinction that the Plaintiffs would have this Court make is that in *Piper* the state law of forum non conveniens was the same as the federal law of non conveniens while that is not the situation here.

The Court, having considered the arguments of the parties and being fully advised, finds that the law as stated in *Piper Aircraft*, 454 U.S. 235, and *Gilbert*, 330 U.S. 501, governs this case. The Court finds further that application of the factors listed in *Piper Aircraft* and *Gilbert* to the case at bar requires that the motions to dismiss be granted.

The doctrine of *forum non conveniens* is simply a tool that a court may use to resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of the law. General venue statutes are generally drawn to allow a plaintiff a choice of forums and Plaintiffs may be tempted to abuse their right to choose. *Gilbert*, 330 U.S. at 507. While the Plaintiffs choice of forums is usually assumed to be a convient forum, that assumption is less reasonable and entitled to less weight when the Plaintiff

is foreign. *Piper Aircraft*, 102 S. Ct. at 266. The determination of the *forum non conveniens* question is within the sound discretion of the trial court and when it is based on a reasonable consideration of the *Gilbert* factors, it will not be disturbed. *Piper Aircraft*, 102 S. Ct. at 266.

The pertinent factors for consideration, as detailed in *Gilbert*, are:

1. the private interests of the litigants:
   a. the relative ease of access to sources of proof;
   b. availability of compulsory process for attendance of unwilling witnesses;
   c. the cost of obtaining the attendance of witnesses;
   d. the possibility of viewing the premises concerned;
   e. and, all other practical problems that make trial of a case easy, expeditious and inexpensive;
2. the public interest:
   a. congestion of the court docket;
   b. the burden of jury duty for a case that has little or no relation to the community;
   c. the application of the law by a forum that is familiar with the law which governs the case.

Gilbert, 330 U.S. at 508.

In addition, the Court in *Piper Aircraft* considered the availability of an alternative forum that could exercise jurisdiction and offer the Plaintiffs a remedy; the inability to implead potential third party defendants in one jurisdiction; and, the added burden imposed on the Defendant as compared to the added convenience to be realized by the Plaintiffs. 102 S. Ct. 252.

Applying these considerations to the case at bar, the Court finds that the considerations overwhelming weigh in favor of dismissal. The private interests are hampered in that the alleged injuries occurred in Costa Rica. All the Plaintiffs are Costa Rican. Most of the evidence and witnesses are in Costa Rica and none are in Florida and compulsory process would not be available to compel production of this evidence or the attendance of these witnesses. The cost of obtaining the evidence from Costa Rica would be substantial, if possible. The Defendants would not be able to implead potential third party defendants located in Costa Rica in this action in Florida. And, as was the case in *Piper Aircraft*, the Plaintiffs have not offered any specific reason showing the convenience of their choice.

As to the public interest factors, this case is essentially fifty eight different law suits with different elements of damages, negligence, contributory negligence etc. It could not help but congest this Court's docket more than it would that of a Court at the situs of the injury simply because of the logistics of dealing with fifty eight different Plaintiffs at this distance. It would force the Court to conduct a complex exercise in comparative law and consider a foreign law with which the Court is not familiar and which is in a foreign language. The avoidance of such comparisons is one of the objectives of the doctrine of *forum non conveniens*. *Piper Aircraft*, 102 S. Ct. at 263. It would require local jurors to hear and decide a dispute that has no connection with this community. And, finally, the Defendants have asserted that Costa Rica offers the Plaintiffs an alternative forum with an adequate remedy, an assertion that has not been rebutted by the Plaintiffs.

The Plaintiffs contend that this Court must allow further discovery before it decides the issue of *forum non conveniens*. But the Court in *Piper Aircraft* found that a detailed inquiry into the facts was not necessary and, in fact would defeat the purpose of the doctrine. 102 S. Ct. at 267. As in *Piper Aircraft*, the Defendants here have moved for dismissal precisely because many crucial witnesses are located beyond the reach of the compulsory process of this Court and are thus difficult to identify or interview. The record contains the unrebutted allegations of the Defendants as to the difficulties caused by this choice of forum as well as affidavits substantiating such difficulties, this information is sufficient for the Court to adequately consider the *Gilbert* and *Piper Aircraft* factors.

As to the Plaintiffs' contention that state law should apply, the Court agrees with the statement of the United States District Court for the Southern District of Ohio in *in re Richardson-Merrell, Inc.*, 545 F.Supp. 1130 (S.D. Ohio 1982):

> [G]iven the discretionary nature of the *forum non conveniens* inquiry and the factors established by the Supreme Court to guide such a determination, it would appear anomalous for the Court to apply anything but federal principles.

545 F.Supp. at 1132.

And:

> Most of the 'public interest factors' affecting the convenience of the forum relate peculiarly to the *court* in which the case is pending, rather than to the state in which the federal court is located.

id. at n.3.

Accordingly, the Court does:

ORDER and ADJUDGE that the Defendants' Motions be, and they are GRANTED. This cause is DISMISSED.

DONE and ORDERED in chambers at the United States Courthouse, Miami, Dade County, Florida this 25th day of August, 1983.

/s/ JAMES LAWRENCE KING
James Lawrence King
U. S. District Judge

cc: all counsel

APPENDIX D

NO. 84-17171

IN THE DISTRICT COURT
FOR THE COUNTY OF HARRIS
113TH JUDICIAL DISTRICT

(Filed April 11, 1984)

DOMINGO CASTRO ALFARO;

ISMAIL CAMPOS ALPIZAR and
DEYANRA CORDERO ALVARADO;

OVIDIO MORERA ALVARADO and
FLORINDA ROJAS DURAN;

ALVARO MORERA ALVAREZ and
JEREMY MORERA LOPEZ;

JESUS HERNANDEZ BADILLA and
ELIDIETH ROMAN AZOFEIFA;

EDWIN LEON BARBOZA, ET. UX.;

EFRAIM HERRA BARBOZA;

WALDEMAR LOAIZA CALVO;

EDURADO PEREZ CAMPOS and
LUZ MARINA CAMPOS RODRIGUEZ;

CLAUDIO SALAZAR CARBALLO and
DELEFINA ALMANZA PEREZ;

JORGE VAZQUEZ CARRILLO and
NOEMY SALINAS SALINAAS;

EFRAIN NUNEZ CASTRO, ET. UX.;

JOEL DINARTE CASTRO;

JORGE CASTRO CASTRO and
NURY BARBOZA MORA;

SERGIO ZAMORA CASTRO and
CLARA MARIA CHAVEZ VARGAS;

ALCIBIADES NUNEZ CESPEDES and
MARIA ESTER MONTERO BOGANTES;

MIGUEL ANGEL STELLAR CHAVES and
MARIA DEL SOCORRO SANCHEZ OSES;

DIDIER ARIAS ELIZONDO and
IRENE BARRERA CHAVARRIA;

GREGORIA PEREZ ESPINOZA and
TERESA SANCHEZ ADOLIO;

SIGIFREDO MORALES ESPINOSA;

FRANCISCO ARIAS FALLAS and
MARITZA GOMEZ PEREZ;

RIGOBERTO GARITA GARITA and
MARIA CRISTINA CRUZ MARTINEZ;

MANUEL GOMEZ GOMEZ and
DEYANIRA ENRIQUEZ QUEVARA;

ANGEL SOLANO GONZALES and
LUZ RODRIGUES RAMIREZ;

FRANCISCO MORERA GONZALEZ and
ELOISA RAMIREZ CAMPOS;

MARCIANO SOLANO GONZALEZ and
FLORA ELENA FERNANDEZ ROBLES;

ANDRES VEGA GRANADOS and
MARTA JIMENEZ GONZALES;

ALFREDO BERMUDEZ HERNANDEZ and
MARIA LUISA BERMUDEZ ORDONEZ;

JUAN FIGUEROA MATARRITA and
MIREYA PEREZ PEREIRA;

URIEL NUNEZ MOYA and
MIRIAM CARTIN ARAYA;

ELI ORDONEZ MURILLO and
NATIVIDAD ROBLES DURATES;

ISMAEL SALAS NUNEZ and
BASELISA MEDINA MATARRITA;

ANTONIO VILLALOBOS ORTIZ and
MARITZA SOSSA SOSSA;

JORGE VEGA PEREZ;

CARLOS LUIS MUNOZ RAMIREZ;

FRANCISCO RAMIREZ RAMIREZ and
XINIA VINDAS CASTILLO;

VICENTE GUEVARA REYES and
MARIA CECILIA DURAN CORRALES;

GERARDO ESPINOZA RODRIGUEZ;

DANIEL ZUMBADO SALAS and
LEDA MARIA ROSALES ROSALES;

MARIO ZUMBADO SALAS and
ORLENDIA CASCANTE NAVARRO;

RUBEN MORALES SALAZAR and
BLANCA NIEVES ARIAS QUESADA;

ABELINO ROJAS SEQUEIRA;

JOSE OBANDO SEQUEIRA and
JUDITH CAMPOS GONZALEZ;

JOSE SIBAJA SOTA and
BLANCA NIEVES CASCANTE NAVARRO;

ELEI ELIZONDO UMANA and
ROSALIA SOLANO GONZALEZ;

JUAN ELIZONDO UMANA;

ARNOLDO GALLO VALLEJOS;

MANUEL FLORES VALVERDE
Plaintiffs,

v.

DOW CHEMICAL COMPANY,
SHELL OIL COMPANY and
AMVAC CHEMICAL CORPORATION,
Defendants.

PLAINTIFF'S ORIGINAL PETITION

COME NOW the above-referenced Plaintiffs complaining of the Defendants SHELL OIL COMPANY, DOW CHEMICAL COMPANY and AMVAC CHEMICAL CORPORATION and for cause of action would show the Court and jury as follows:

1. Plaintiffs are residents of Costa Rica. Defendant SHELL OIL COMPANY has its principal offices in Harris County and, therefore, venue lies against all Defendants in Harris County.

2. Defendant, SHELL OIL COMPANY is a Delaware corporation with its principal place of business in Texas; said corporation may be served through its registered agent, C. T. Corporation, 811 Dallas Avenue, Houston, Texas 77002.

3. Defendant, DOW CHEMICAL COMPANY, is a Delaware corporation with its principal place of business in a state other than Texas; said corporation may be served through its registered agent, C. T. Corporation System, Republic National Bank Building, Dallas, Texas 75210.

4. Defendant, AMVAC CHEMICAL CORPORATION, is a California corporation with its principal place of business in a state other than Texas. Although Defendant, AMVAC CHEMICAL CORPORATION, does business within the State of Texas and is required to maintain a registered agent for service of process, said Defendant has not designated such an agent and may, therefore, be served at its corporate headquarters, 4100 E. Washington Boulevard, Los Angeles, California 90023 pursuant to TEX. R. CIV. STAT. ANN. art. 2031(b) and TEX. R. CIV. P. 108.

5. This cause of action is predicated on products liability theories of strict liability, implied warranty and negligence, as more specifically alleged herein. The products complained of are nematocides containing the chemical dibromochloropropane, commonly known as DBCP. These products were manufactured, sold and distributed by the Defendants DOW CHEMICAL COMPANY, SHELL OIL COMPANY and AMVAC CHEMICAL CORPORATION.

6. Plaintiffs, DOMINGO CASTRO ALFARO, ISMAIL CAMPOS ALPIZAR, OVIDIO MORERA ALVARDO, ALVARO MORERA ALVAREZ, JESUS HERNANDEZ BADILLA, EDWIN LEON BARBOZA, EFRAIM HERRA BARBOZA, WALDEMAR LOAIZA CALVO, EDUARDO PEREZ CAMPOS, CLAUD-

IO SALAZAR CARBALLO, JORGE VASQUEZ CARRILLO, EFRAIN NUNEZ CASTRO, JOEL DINARTE CASTRO, JORGE CASTRO CASTRO, SERGIO ZAMORA CASTRO, ALCIBIADES NUNEZ CESPEDES, MIGUEL ANGEL STELLER CHAVES, DIDIER ARIAS ELIZONDO, GREGORIA PEREZ ESPINOZA, SIGIFREDO MORALES ESPINOZA, FRANCISCO ARIAS FALLAS, MARITA GOMEZ PEREZ, RIGOBERTO GARITA GARITA, MANUEL GOMEZ GOMEZ, ANGEL SOLANO GONZALES, FRANCISCO MORERA GONZALEZ, MARCIANO SOLANO GONZALEZ, ANDRES VEGA GRANADOS, ALFREDO BERMUDEZ HERNANDEZ, JUAN FIGUEROA MATARRITA, URIEL NUNEZ MOYA, ELI ORDONEZ MURILLO, ISMAEL SALAS NUNEZ, ANTONIO VILLALOBOS ORTIZ, JORGE VEGA PEREZ, CARLOS LUIS MUNOZ RAMIREZ, FRANCISCO RAMIREZ RAMIREZ, VICENTE GUEVARA REYES, GERARDO ESPINOZA RODRIGUEZ, DANIEL ZUMBADO SALAS, MARIO ZUMBADO SALAS, RUBEN MORALES SALAZAR, ABELINO ROJAS SEQUEIRA, JOSE OBANDO SEQUEIRA, JOSE SIBAJA SOTA, ELEI ELIZONDO UMANA, JUAN ELIZONDO UMANA, ARNOLDO GALLO VALLEJOS and MANUEL FLORES VALVERDE, allege that they were exposed to these products in Costa Rica and, as a result thereof, have suffered serious and permanent personal injuries including, but not limited to, sterility.

NEGLIGENCE

7. The illnesses and disabilities of the Plaintiffs, DOMINGO CASTRO ALFARO, ISMAIL CAMPOS ALPIZAR, OVIDIO MORERA ALVARDO, ALVARO

MORERA ALVAREZ, JESUS HERNANDEZ BADILLA, EDWIN LEON BARBOZA, EFRAIM HERRA BARBOZA, WALDEMAR LOAIZA CALVO, EDURADO PEREZ CAMPOS, CLAUDIO SALAZAR CARBALLO, JORGE VAZQUEZ CARRILLO, EFRAIN NUNEZ CASTRO, JOEL DINARTE CASTRO, JORGE CASTRO CASTRO, SERGIO ZAMORA CASTRO, ALCIBIADES NUNEZ CESPEDES, MIGUEL ANGEL STELLER CHAVES, DIDIER ARIAS ELIZONDO, GREGORIA PEREZ ESPINOZA, SIGIFREDO MORALES ESPINOZA, FANCISCO ARIAS FALLAS, MARITZA GOMEZ PEREZ, RIGOBERTO GARITA GARITA, MANUEL GOMEZ GOMEZ, ANGEL SOLANO GONZALES, FRANCISCO MORERA GONZALEZ, MARCIANO SOLANO GONZALEZ, ANDRES VEGA GRANADOS, ALFREDO BERMUDEZ HERNANDEZ, JUAN FIGUEROA MATARRITA, URIEL NUNEZ MOYA, ELI ORDONEZ MURILLO, ISMAEL SALAS NUNEZ, ANTONIO VILLALOBOS ORTIZ, JORGE VEGA PEREZ, CARLOS LUIS MUNOZ RAMIREZ, FRANCISCO RAMIREZ RAMIREZ, VICENTE GUEVARA REYES, GERARDO ESPINOZA RODRIGUEZ, DANIEL ZUMBADO SALAS, MARIO ZUMBADO SALAS, RUBEN MORALES SALAZAR, ABELINO ROJAS SEQUEIRA, JOSE OBANDO SEQUEIRA, JOSE SIBAJA SOTA, ELEI ELIZONDO UMANA, JUAN ELIZONDO UMANA, ARNOLDO GALLO VALLEJOS and MANUEL FLORES VALVERDE, are a direct and proximate result of the negligence of each Defendant in that said Defendants produced, sold and/or otherwise put into the stream of commerce, DBCP-containing materials which the Defendants knew, or in the exercise of ordinary care ought to have known, were deleterious and highly

harmful to said Plaintiffs' health and well being. The defendants were negligent in one, some and/or all of the following respects, among others, same being the proximate cause of said Plaintiffs' illnesses and disabilities:

(a) In failing to adequately warn Plaintiffs of the dangerous characteristics of DBCP;

(b) In failing to provide Plaintiffs with information as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if in truth there were any, to protect Plaintiff from being harmed and disabled by exposure to DBCP;

(c) In failing to place adequate warnings in Spanish on the containers of said DBCP-containing materials to warn of the dangers to health of coming into contact with said DBCP;

(d) In failing to take reasonable precaution or exercise reasonable care to publish, adopt and enforce a safety plan and a safe method of handling and applying DBCP;

(e) In failing to develop and utilize a substitute material for DBCP in the aforesaid nematocides;

(f) In failing to test DBCP prior to releasing these products for sale; and

(g) In concealing the results of any tests conducted on DCPB by Defendants, if in fact any Defendant ever tested its DBCP-containing products.

STRICT LIABILITY

8. All of the allegations contained in the previous paragraphs are realleged herein.

9. The DBCP-containing products that were used and applied by Plaintiff were designed and manufactured by Defendants and subsequently sold, directly and indirectly, to the various employers of Plaintiffs. Said products left the hands of Defendants in a defective and unreasonably dangerous condition in the following respects:

(a) said DBCP-containing products did not contain an adequate and timely warning regarding the serious health health hazards associated with DBCP;

(b) said products did not contain an adequate and timely warning to the effect that protective equipment should be used when working with DBCP;

(c) said products were defectively designed in that they contained DBCP although a substitute for this chemical was available at all times material to this litigation;

(d) said products were defectively designed in that they did not contain an adequate and timely warning concerning the hazards of DBCP and the need for safety precautions when using DBCP;

(e) said products were unreasonably dangerous *per se*.

10. Each Defendant is and/or was engaged in the business of manufacturing and/or distributing such DBCP-containing products and these products, without substantial change in condition after they were sold, were a producing cause of the damages sustained by Plaintiffs.

11. Plaintiffs were unaware of the dangerous propensities of the products which rendered them unsafe for their intended use. Plaintiffs used the aforementioned products in a manner that was reasonably anticipated

by the Defendants. Further, during the periods that said Plaintiffs were exposed to the products of the Defendants, said products were being utilized in a manner which was intended by Defendants.

IMPLIED WARRANTY

12. All of the allegations contained in the previous paragraphs are realleged herein.

13. The Defendants impliedly warranted that their DBCP-containing products were of good and merchantable quality and fit for their intended use.

14. The Plaintiffs would show that they worked in close proximity to the DBCP-containing products of the Defendants and their presence was known or ought to have been reasonably anticipated by the Defendants. The implied warranty made by the Defendants that their aforesaid products were of a good and merchantable quality and were fit for their particular intended use was breached in that Plaintiffs' work with Defendants' products caused them to be exposed to DBCP and to be injured as a proximate result thereof.

EXEMPLARY DAMAGES

15. The Plaintiffs would show that the damages incurred as described herein were directly and proximately caused by the reckless and grossly negligent commissions and omissions, conscious indifference, and utter disregard for the welfare of the said Plaintiffs on the part of the Defendants herein, their agents, servants, employees, managers, superintendants, supervisors, and officers in that they ignored and concealed evidence available to them which indicated that DBCP

and DPCP-containing materials were harmful and deadly to persons coming in contact with said materials. Consequently, users of DBCP-containing products, such as Plaintiffs, were deprived of the opportunity of free choice as to whether or not to expose themselves to the DBCP-containing products manufactured by Defendants. Plaintiffs would show that as a result of the conduct of Defendants as aforesaid, they should be awarded an amount that would punish Defendants and act as a deterrent to Defendants and others from the commission of similar wrongs.

Compensatory Damages

16. As a direct and proximate result of Defendants tortious conduct as aforesaid, Plaintiffs, DOMINGO CASTRO ALFARO, ISMAIL CAMPOS ALPIZAR, OVIDIO MORERA ALVARADO, ALVARO MORERA ALVAREZ, JESUS HERNANDEZ BADILLA, EDWIN LEON BARBOZA, EFRAIM HERRA BARBOZA, WALDEMAR LOAIZA CALVO, EDURADO PEREZ CAMPOS, CLAUDIO SALAZAR CARBALLO, JORGE VAZQUEZ CARRILLO, EFRAIN NUNEZ CASTRO, JOEL DINARTE CASTRO, JORGE CASTRO CASTRO, SERGIO ZAMORA CASTRO, ALCIBIADES NUNEZ CESPEDES, MIGUEL ANGEL STELLER CHAVES, DIDIER ARIAS ELIZONDO, GREGORIA PEREZ ESPINOZA, SIGIFREDO MORALES ESPINOSA, FRANCISCO ARIAS FALLAS, MARITZA GOMEZ PEREZ, RIGOBERTO GARITA GARITA, MANUEL GOMEZ GOMEZ, ANGEL SOLANO GONZALEZ, FRANCISCO MORERA GONZALEZ, MARCIANO SOLANO GONZALEZ, ANDRES VEGA GRANADOS, ALFREDO BERMU-

DEZ HERNANDEZ, JUAN FIGUERO MATARRITA, URIEL NUNEZ MOYA, ELI ORDONEZ MURILLO, ISMAEL SALAS NUNEZ, ANTONIO VILLALOBOS ORTIZ, JORGE VEGA PEREZ, CARLOS LUIS MUNOZ RAMIREZ, FRANCISCO RAMIREZ RAMIREZ, VICENTE GUEVARA REYES, GERARDO ESPINOZA RODRIGUEZ, DANIEL ZUMBADO SALAS, MARIO ZUMBADO SALAS, RUBEN MORALES SALAZAR, ABELINO ROJAS SEQUEIRA, JOSE OBANDO SEQUEIRA, JOSE SIBAJA SOTA, ELEI ELIZONDO UMANA, JUAN ELIZONDO UMANA, ARNOLDO GALLO VALLEJOS and MANUEL FLORES VALVERDE, have developed sexual and reproductive abnormalities and other related conditions and have been damaged in the following particulars for all of which suit is herein brought:

(a) Said Plaintiffs have suffered great physical pain and mental anguish and will continue to suffer great pain of body and mind throughout their lifetime;

(b) Plaintiffs have incurred and will continue to incur hospital, medical, pharmaceutical and other expenses in the future due to their exposure to Defendants' aforesaid products;

(c) Plaintiffs suffer an extraordinarily increased likelihood of developing cancer as a result of their exposure to DBCP-containing products manufactured, sold and/or distributed by the named Defendants;

(d) Plaintiffs suffer an extraordinarily increased risk of genetic damage as a result of their exposure to Defendants' aforesaid products;

(e) Plaintiffs will suffer a loss of earning capacity due to their exposure to said DBCP-containing products;

(f) Plaintiffs will incur expenses for domestic help and nursing care in the future due to their exposure to Defendants' aforesaid products;

(g) Plaintiffs have lost the capacity to enjoy life and will continue to suffer such loss in the future due to their exposure to Defendants' aforesaid products;

(h) Plaintiffs, DEYANIRA CORDERO ALVARADO, FLORINDA ROJAS DURAN, JEREMY MORERA LOPEZ, ELIDIETH ROMAN AZOFEIFA, LUZ MARINA CAMPOS RODRIGUEZ, DELFINA ALMANZA PEREZ, NOEMY SALINAS SALINAAS, NURY BARBOZA MORA, CLARA MARIA CHAVEZ VARGAS, MARIA ESTER MONTERO BOGANTES, MARIA DEL SOCORRO SANCHEZ OSES, IRENE BARRERA CHAVARRIA, TERESA SANCHEZ ADOLIO, MARITZA GOMEZ PEREZ, MARIA CRISTINA CRUZ MARTINEZ, DEYANIRA ENRIQUEZ QUEVARA, LUZ RODRIGUES RAMIREZ, ELOISA RAMIREZ CAMPOS, FLORA ELENA FERNANDEZ ROBLES, MARTA JIMENEZ GONZALES, MARIA LUISA BERMUDEZ ORDONEZ, MIREYA PEREZ PEREIRA, MIRIAM CARTIN ARAYA, NATIVIDAD ROBLES DURATES, BASELISA MEDINA MATARRITA, MARITZA SOSSA SOSSA, XINIA VINDAS CASTILLO, MARIA CECILIA DURAN CORRALES, LEDA MARIA ROSALES ROSALES, ORLENDIA CASCANTE NAVARRO, BLANCA NIEVES ARIAS QUESADA, JUDITH CAMPOS GONZALEZ, BLANCA NIEVES CASCANTE NAVARRO

and ROSALIA SOLANO GONZALEZ, have suffered and will continue to suffer the loss of their husbands', DOMINGO CASTRO ALFARO, ISMAIL CAMPOS ALPIZAR, OVIDIO MORERA ALVARADO, ALVARO MORERA ALVAREZ, JESUS HERNANDEZ BADILLA, EDWIN LEON BARBOZA, EFRAIM HERRA BARBOZA, WALDEMAR LOAIZA CALVO, EDURADO PEREZ CAMPOS, CLAUDIO SALAZAR CARBALLO, JORGE VAZQUEZ CARRILLO, EFRAIN NUNEZ CASTRO, JOEL DINARTE CASTRO, JORGE CASTRO CASTRO, SERGIO ZAMORA CASTRO, ALCIBIADES NUNEZ CESPEDES, MIGUEL ANGEL STELLER CHAVES, DIDIER ARIAS ELIZONDO, GREGORIA PEREZ ESPINOZA, SIGIFREDO MORALES ESPINOSA, FRANCISCO ARIAS FALLAS, MARITZA GOMEZ PEREZ, RIGOBERTO GARITA GARITA, MANUEL GOMEZ GOMEZ, ANGEL SOLANO GONZALES, FRANCISCO MORERA GONZALEZ, MARCIANO SOLANO GONZALEZ, ANDRES VEGA GRANADOS, ALFREDO BERMUDEZ HERNANDEZ, JUAN FIGUEROA MATARRITA, URIEL NUNEZ MOYA, ELI ORDONEZ MURILLO, ISMAEL SALAS NUNEZ, ANTONIO VILLALOBOS ORTIZ, JORGE VEGA PEREZ, CARLOS LUIS MUNOZ RAMIREZ, FRANCISCO RAMIREZ RAMIREZ, VICENTE GUEVARA REYES, GERARDO ESPINOZA RODRIGUEZ, DANIEL ZUMBADO SALAS, MARIO ZUMBADO SALAS, RUBEN MORALES SALAZAR, ABELINO ROJAS SEQUEIRA, JOSE OBANDO SEQUEIRA, JOSE SIBAJA SOTA, ELEI ELIZONDO UMANA, JUAN ELIZONDO UMANA, ARNOLDO GALLO VALLEJOS and MANUEL FLORES VALVERDE, services, consortium, financial support and the

care and comfort of their society because of their said injuries and disabilities, and they will incur expenses medical and nursing attention rendered to her said husband in the future.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment against the Defendants, and each of them, jointly and severally, for general and special damages and for punitive damages, for their costs expended herein, and for interest on said judgment from the date thereof until paid, at the legal rate, and for such other and further relief, both at law and in equity, to which the Plaintiffs may show themselves justly entitled.

Respectfully submitted,

BARON & ASSOCIATES
A Professional Corporation
1050 Dallas Federal Savings
Tower
Dallas, Texas 75225
(214) 369-3605

By: /s/ RUSSELL W. BUDD
Russell W. Budd
State Bar No. 03312400

CAUSE NO. 84-17171

Receipt No. 658279-$20.00-CBM

4-11-84 TR# 70241695

DOMINGO CASTRO ALFARO, et al.,
Plaintiff,

v.

SHELL OIL COMPANY, et at.

(Filed April 24, 1984)

CITATION

THE STATE OF TEXAS
County of Harris

To Any Sheriff or Constable of Texas

TO: Shell Oil Company, a Delaware corporation, by serving its registered agent, C. T. Corporation
811 Dallas Ave.
Houston, Tx. 77002

You are hereby commanded to appear in the Courtroom of the 113th Judicial District Court in the Courthouse in the City of Houston, Harris County, Texas, by filing a Written Answer in the Court and under the number and style shown in the caption above, to the accompanying Plaintiff's Petition attached hereto at or before 10 o'clock AM of the Monday next after the expiration of 20 days after the date you were served with this Citation.

A copy of the plaintiff's original Petition, filed on the 11th day of April 1984, the nature of which is set out in said Petition, is attached.

TO OFFICER SERVING:

This Citation is issued the 17th day of April, 1984, under my hand and the Seal of said Court. If this Citation is not served within 90 days from this date of issuance, it shall be returned to this Court unserved.

SEAL

RAY HARDY, Clerk of the
District Courts Of
Harris County, Texas

By: /s/ SARAH DAVIS
Sarah Davis, Deputy

Issued at request of: Baron & Associates
A Professional Corp.

Address: 1050 Dallas Federal Savings Tower
Dallas, Texas 75225

Bar No.: 03312400

APPENDIX E

CONRAD, F. WALTER, JR.

3000 ONE SHELL PLZ

HOUSTON, TX 77002

CRT — 061 CASE — 8417171

ALFARO, DOMINGO CASTRO

v.

SHELL OIL COMPANY

THIS IS TO ADVISE THAT IN THE ABOVE CAUSE A PARTIAL DISMISSAL ON AGREEMENT WAS SIGNED ON 04/13/87 AS TO

ALVARADO, DEYANIRA CORD
LOPEZ, JEREMY MORERA
BARBOZA, EFRAIM HERRA
RODIGUEZ, LUZ MARINA
CARRILLO, JORGE VAZQUEZ
DURAN, FLORINDA ROJAS
AZOFEIFA, ELIDIETH ROMA
CAMPOS, EDURADO PEREZ
PEREZ, DELFINA ALMANZA
SALINAAS, NOEMY SALINAS

RAY HARDY, DISTRICT CLERK
HARRIS COUNTY, TEXAS

CONRAD, F. WALTER, JR.

3000 ONE SHELL PLZ

HOUSTON, TX 77002

CRT — 061 CASE — 8417171

ALFARO, DOMINGO CASTRO

v.

SHELL OIL COMPANY

THIS IS TO ADVISE THAT IN THE ABOVE CAUSE A PARTIAL DISMISSAL ON AGREEMENT WAS SIGNED ON 04/13/87 AS TO

DURATES, NATIVIDAD ROBL
ORTIZ, ANTONIO VILLALOB
RAMIREZ, CARLOS LUIS MU
CORRALES, MARIA CECILIA
NAVARRO, ORLENDIA CASCA
MATARRITA, BASELISA MED
SOSSA, MARITZA SOSSA
CASTILLO, XINIA VINDAS
ROSALES, LEDA MARIA ROS
QUESADA, BLANCA NIEVES

RAY HARDY, DISTRICT CLERK
HARRIS COUNTY, TEXAS

CONRAD, F. WALTER, JR.
3000 ONE SHELL PLZ
HOUSTON, TX 77002

CRT — 061 CASE — 8417171

ALFARO, DOMINGO CASTRO

v.

SHELL OIL COMPANY

THIS IS TO ADVISE THAT IN THE ABOVE CAUSE A PARTIAL DISMISSAL ON AGREEMENT WAS SIGNED ON 04/13/87 AS TO

SEQUEIRA, JOSE OBANDO
NAVARRO, BLANCA NIEVES
VALLEJOS, ARNOLDO GALLO
GONZALEZ, FRANCISCO MOR
GONZALEZ, JUDITH CAMPOS
GONZALEZ, ROSALIA SOLAN
GOMEZ, MANUEL GOMEZ

RAY HARDY, DISTRICT CLERK
HARRIS COUNTY, TEXAS

CONRAD, F. WALTER, JR.
3000 ONE SHELL PLZ
HOUSTON, TX 77002

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ALFARO, DOMINGO CASTRO

v.

SHELL OIL COMPANY

THIS IS TO ADVISE THAT IN THE ABOVE CAUSE A PARTIAL DISMISSAL ON AGREEMENT WAS SIGNED ON 04/13/87 AS TO

MARTINEZ, MARIA CRISTIN
RAMIREZ, LUZ RODRIGUES
ROBLES, FLORA ELENA FER
HERNANDEZ, ALFREDO BERM
PEREIRA, MIREYA PEREZ
QUEVARA, DEYANIRA ENRIQ
CAMPOS, ELOISA RAMIREZ
GONZALES, MARTA JIMENEZ
ORDONEZ, MARIA LUISA BE
ARAYA, MIRIAM CARTIN

RAY HARDY, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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3000 ONE SHELL PLZ
HOUSTON, TX 77002

CRT — 061 CASE — 8417171

ALFARO, DOMINGO CASTRO

v.

SHELL OIL COMPANY

THIS IS TO ADVISE THAT IN THE ABOVE CAUSE A PARTIAL DISMISSAL ON AGREEMENT WAS SIGNED ON 04/13/87 AS TO

CASTRO, EFRAIN NUNEZ
MORA, NURY BARBOZA
BOGANTES, MARIA ESTER M
CHAVARRIA, IRENE BARRER
ESPINOSA, SIGIFREDO MOR
CASTRO, JORGE CASTRO
VARGAS, CLARA MARIA CHA
OSES, MARIA DEL SOCORRO
ADOLIO, TERESA SANCHEZ
PEREZ, MARITZA GOMEZ

RAY HARDY, DISTRICT CLERK
HARRIS COUNTY, TEXAS

NO. 84-17,171

IN THE DISTRICT COURT
OF HARRIS COUNTY, TEXAS
61ST DISTRICT COURT

DOMINGO CASTRO ALFARO, ET AL

v.

DOW CHEMICAL COMPANY, ET AL

ORDER

On this the _____ day of April, 1987 came on to be heard the motion of Dow Chemical Company and Shell Oil Company for sanctions in seeking dismissal of certain plaintiffs herein for failure to answer discovery; and, it appearing to the Court that such motion should be granted, it is, accordingly,

ORDERED, ADJUDGED AND DECREED that the claims and causes of action asserted herein by the following plaintiffs are dismissed for failure to answer discovery including failure to file answers to requests for admission or written interrogatories:

Deyanira Cordero Alvarado;
Florinda Rojas Duran;
Jeremy Morera Lopez;
Elidieth Roman Azofeifa;
Efraim Herra Barboza;
Eduardo Perez Campos;
Luz Marina Campos Rodriguez;
Delfina Almanza Perez;
Jorge Vazquez Carrillo;
Noemy Salinas Salinaas;
Efrain Nunez Castro;

Jorge Castro Castro;
Nury Barboza Mora;
Clara Maria Chavez Vargas;
Maria Ester Montero Bogantes;
Maria Del Socorro Sanchez Oses;
Irene Barrera Chavarria;
Teresa Sanchez Adolio;
Sigifredo Morales Espinosa;
Maritza Gomez Perez;
Maria Christina Cruz Martinez;
Deyanira Enriquez Quesara;
Luz Rodrigues Ramirez;
Eloisa Ramirez Camos;
Flora Elena Fernandez Robles;
Marta Jimenez Gonzales;
Alfredo Bermudez Hernandez;
Maria Luisa Bermudez Ordonez;
Mireya Perez Pereira;
Miriam Cartin Araya;
Natividad Robles Durates;
Baselisa Medina Matarrita;
Antonio Villalobos Ortiz;
Maritza Sossa Sossa;
Carlos Luis Munoz Ramirez;
Xinia Vindas Castillo;
Maria Cecilia Duran Corrales;
Leda Maria Rosales Rosales;
Orlendia Cascante Navarro;
Blanca Nieves Arias Quesada;
Jose Obando Sequeira;
Judith Campos Gonzalez;
Blanca Nieves Cascante Navarro;
Rosalia Solano Gonzalez;
Arnoldo Gallo Vallejuos;
Manuel Gomez Gomez;
Francisco Morera Gonzalez.

Costs of court relating to the claims and causes of action of those plaintiffs dismissed above shall be taxed to the parties incurring them.

In all other respects, the Motions for Sanctions and the Motions to Dismiss for Failure to Provide Discovery* in the above referenced cases are hereby dismissed.

SIGNED this _____ day of April, 1987.

_____

DISTRICT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

BAKER & BOTTS

By: /s/ F. WALTER CONRAD
F. Walter Conrad
Bar No. 04709000
Attorney for Defendant
Dow Chemical Company

SHELL OIL COMPANY

By: /s/ BURT BALLANFANT
Burt Ballanfant
Bar No. 1647000
Attorney for Defendant
Shell Oil Company

BARON & BUDD

By: /s/ CHARLES S. SIEGEL
Charles S. Siegel
Bar No. 18341875
Attorney for Plaintiffs

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* which are set for hearing on April 13, 1987.

APPENDIX F

NO. 84-17,171

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
61st JUDICIAL DISTRICT

DOMINGO CASTRO ALFARO, et al.,
Plaintiffs,

v.

DOW CHEMICAL COMPANY, et al.,
Defendants.

ORDER OF DISMISSAL

On April 28, 1987, came on before the Court the motions to dismiss for lack of jurisdiction and to dismiss on the basis of forum non conveniens of Dow Chemical Company and Shell Oil Company; and the Court having heard argument of counsel, read the briefs and affidavits filed by all the parties herein; reviewed the responses to discovery on file with the Court; and reviewed the stipulations filed by defendants has determined that the Court has jurisdiction of all the remaining claims asserted herein but that the defendants' motion to dismiss on the basis of forum non conveniens is meritorious and should be granted as to all parties for the reasons stated in the briefs and motions filed herein by the defendants; therefor it is hereby

ORDERED that the claims of Domingo Castro Alfaro; Ismail Campos Alpizar; Ovidio Morera Alvarado; Alvaro Morera Alvarez; Jesus Hernandez Badilla; Edwin Leon

Barboza; Waldemar Loaiza Calvo; Claudio Salazar Carbello; Joel Dinarte Castro; Sergio Zamora Castro; Alcibiades Nunez Cespedes; Miguel Angel Steller Chaves; Didier Arias Elizondo; Gregoria (Gregorio) Perez Espinoza; Francisco Arias Fallas; Rigoberto Garita Garita; Angel Solano Gonzales; Marciano Solano Gonzales; Andres Vega Granados; Juan Figueroa Matarrita; Uriel Nunez Moya; Eli Ordonez Murillo; Ismael Salas Nunez; Jorge Vega Perez; Francisco Ramirez Ramirez; Vicente Guevara Reyes; Gerardo Espinoza Rodriguez; Daniel Zumbado Salas; Mario Zumbado Salas; Ruben Morales Salazar; Abelino Rojas Sequeira; Jose Sibaja Sota; Elei Elizondo Umana; Juan Elizondo Umana; and Manuel Flores Valverde; are dismissed as to all parties under the doctrine of forum non conveniens subject to: (1) the stipulations filed herein by Dow Chemical Company and Shell Oil Company and (2) to this case being refiled if the defendants do not comply with the terms of those stipulations. The above-named plaintiffs, citizens of Costa Rica, shall hereafter have the right to proceed with this litigation, if they choose to do so, in Costa Rica where the causes of action arose. All pending motions not expressly granted herein are denied. Limitations statute tolled during pendency of this case in this Court.

SIGNED AND ENTERED at Houston, Texas this 22nd day of June, 1987.

By: /s/ SHEARN SMITH
Shearn Smith
Judge Presiding

APPROVED AS TO FORM AND SUBSTANCE:

SHELL OIL COMPANY

By: BURT BALLANFANT
Burt Ballanfant
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Houston, TX 77252

By: JOSE A. BERLANGA
Jose A. Berlanga
Bar No. 02203400
Room 4708
One Shell Plaza
P. O. Box 2463
Houston TX 77252

DOW CHEMICAL

By: F. WALTER CONRAD
F. Walter Conrad
Bar No. 04709000
3000 One Shell Plaza
Houston, TX 77252

APPROVED AS TO FORM ONLY:

PLAINTIFFS

By: CHARLES S. SIEGEL
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APPENDIX G

RUSSELL W. BUDD
JANE N. SAGINAW
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FEDERICO C. SAYRE
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Attorneys for Plaintiffs

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CASE NO. 0570052

COMPLAINT FOR DAMAGES:

1. Negligence;
2. Strict Liability;
3. Breach of Implied Warranty of Merchantability;

PLAINTIFF'S ORIGINAL COMPLAINT
AND JURY DEMAND

RODRIGO ESQUIVEL AGUILAR and
ADALI CORDERO ALVARADO;
JOSE ANTONIO ROJAS ARAYA and
AURORA AGUERO AGUERO;
OLGER CARTIN ARAYA;
OUIDIO AGUERO ARGUELLO and
MARIA ESTER BERMUDEZ ALAVARADO;
PORFIRO TREJOS BARRANTES and
ELISABETH SALAS RODRIGUEZ;
JUAN MANUEL JIMENEZ CAMBRONERO and
ELVIVA BELLO LOPEZ;
VASILIO SANCHEZ CARAZO and
VINCENTA GARCIA BARRIENTOS;
CLAUDIO SALAZAR CARBALLO and
DELFINA ALMANZA PEREZ;
RAMON VICTORIANO PEREZ FERNANDEZ and
ALEXA SUAREZ MORALES;
DAGOBERTO ARAYA GARITA;
JOSE ANTONIO ZUNIGA GUTIERREZ and
IRIABEL ESPINOZA RODRIGUEZ;
FRANCISCO MELENDEZ MELENDEZ and
ROSA LIZANO SATRUCH;
ADRIAN GOMEZ MONTERO;
MARIO TULIO VILLALOBOS MURRILLO and
LUZ MARIA AGUERO AGUERO;
OLMAN MIRANDA NUNEZ and
CLARIBEL MIRANDA CAJNA;
GERARDO ESPINOZA RODRIGUEZ and
MARIA SALAZAR BALTODANO;
EDWIN CORRALES ROJAS and

VIRGITA HERNANDEZ ARGUEDAS;
MANUEL SANCHEZ SEGURA and
ALEIDE GONZALEZ MORERA;
VICTOR JULIO RODRIGUEZ VASQUEZ

v.

DOW CHEMICAL COMPANY,
SHELL OIL COMPANY and
AMVAC CHEMICAL CORPORATION,

Defndants.

COME NOW the above-referenced Plaintiffs complaining of the Defendants SHELL OIL COMPANY, DOW CHEMICAL COMPANY and AMVAC CHEMICAL CORPORATION and for cause of action would show the Court and jury as follows:

1. Plaintiffs are residents of Costa Rica. Defendant AMVAC CHEMICAL COMPANY has its principal offices in Los Angeles, Los Angeles County, California and, therefore, venue lies aganst all Defendants in Los Angeles County.

2. Defendant, AMVAC CHEMICAL COMPANY is a California corporation with its principal place of business in Los Angeles County; said defendant may be served at its corporate headquarters, 4100 East Washington Boulevard, Los Angeles, California 90023.

3. Defendant, DOW CHEMICAL COMPANY, is a Delaware corporation with its principal place of business in a state other than California; said corporation may be served through its registered agent, John E. Dicks, Lover Ridge Road, Pittsburg, California 94565.

4. Defendant, SHELL OIL COMPANY, is a Delaware corporation with its principal place of business in a state other than California; said corporation may be served through its registered agent, C. T. Corporation Systems, 800 South Figueroa Street, Los Angeles, California 90017.

5. This cause of action is predicated on products liability theories of strict liability, implied warranty and negligence, as more specifically alleged herein. The products complained of are nematocides containing the chemical dibromochloropropane, commonly known as DBCP. These products were manufactured, sold and distributed by the Defendants DOW CHEMICAL COMPANY, SHELL OIL COMPANY and AMVAC CHEMICAL CORPORATION.

6. Plaintiffs, RODRIGO ESQUIVEL AGUILAR, JOSE ANTONIO ROJAS ARAYA, OLGER CARTIN ARAYA, OUIDIO AGUERO ARGUELLO, PORFIRO TREJOS BARRANTES, JUAN MANUEL JIMENEZ CAMBRONERO, VASILIO SANCHEZ CARAZO, CLAUDIO SALAZAR CARBALLO, RAMON VICTORIANO PEREZ FERNANDEZ, DAGOBERTO ARAYA GARITA, JOSE ANTONIO ZUNIGA GUTIERREZ, FRANCISCO MELENDEZ MELENDEZ, ADRIAN GOMEZ MONTERO, MARIO TULIO VILLALOBOS MURRILLO, OLMAN MIRANDA NUNEZ, GERARDO ESPINOZA RODRIGUEZ, EDWIN CORRALES ROJAS, MANUEL SANCHEZ SEGURA, and VICTOR JULIO RODRIGUEZ VASQUEZ, allege that they were exposed to these products in Costa Rica and, as a result thereof, have suffered serious and permanent personal injuries including, but not limited to, sterility.

NEGLIGENCE

7. The illnesses and disabilities of the Plaintiffs, RODRIGO ESQUIVEL AGUILAR, JOSE ANTONIO ROJAS ARAYA, OLGER CARTIN ARAYA, OUIDIO AGUERO ARGUELLO, PORFIRO TREJOS BARRANTES, JUAN MANUEL JIMENEZ CAMBRONERO, VASILIO SANCHEZ CARAZO, CLAUDIO SALAZAR CARBALLO, RAMON VICTORIANO PEREZ FERNANDEZ, DAGOBERTO ARAYA GARITA, JOSE ANTONIO ZUNIGA GUTIERREZ, FRANCISCO MELENDEZ MELENDEZ, ADRIAN GOMEZ MONTERO, MARIO TULIO VILLALOBOS MURRILLO, OLMAN MIRANDA NUNEZ, GERARDO ESPINOZA RODRIGUEZ, EDWIN CORRALES ROJAS, MANUEL SANCHEZ SEGURA, and VICTOR JULIO RODRIGUEZ VASQUEZ, are a direct and proximate result of the negligence of each Defendant in that said Defendants produced, sold and/or otherwise put into the stream of commerce, DBCP-containing materials which the Defendants knew, or in the exercise of ordinary care ought to have known, were deleterious and highly harmful to said Plaintiffs' health and well being. The Defendants were negligent in one, some and/or all of the following respects, among others, same being the proximate cause of said Plaintiffs' illnesses and disabilities.

(a) In failing to adequately warn Plaintiffs of the dangerous characteristics of DBCP;

(b) In failing to provide Plaintiffs with information as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if in truth there were any, to protect Plaintiff from being harmed and disabled by exposure to DBCP;

(c) In failing to place adequate warnings in Spanish on the containers of said DBCP-containing materials to warn of the dangers to health of coming into contact with said DBCP;

(d) In failing to take reasonable precaution or exercise reasonable care to publish, adopt and enforce a safety plan and a safe method of handling and applying DBCP;

(e) In failing to develop and utilize a substitute material for DBCP in the aforesaid nematocides;

(f) In failing to test DBCP prior to releasing these products for sale; and

(g) In concealing the results of any tests conducted on DBCP by Defendants, if in fact any Defendant ever tested its DBCP-containing products.

STRICT LIABILITY

8. All of the allegations contained in the previous paragraphs are realleged herein.

9. The DBCP-containing products that were used and applied by Plaintiff were designed and manufactured by Defendants and subsequently sold, directly and indirectly, to the various employers of Plaintiffs. Said products left the hands of Defendants in a defective and unreasonably dangerous condition in the following respects:

(a) said DBCP-containing products did not contain an adequate and timely warning regarding the serious health health hazards associated with DBCP;

(b) said products did not contain an adequate and timely warning to the effect that protective equipment should be used when working with DBCP;

(c) said products were defectively designed in that they contained DBCP although a substitute for this chemical was available at all times material to this litigation.

(d) said products were defectively designed in that they did not contain an adequate and timely warning concerning the hazards of DBCP and the need for safety precautions when using DBCP;

(e) said products were unreasonably dangerous *per se.*

10. Each Defendant is and/or was engaged in the business of manufacturing and/or distributing such DBCP-containing products and these products, without substantial change in condition after they were sold, were a producing cause of the damages sustained by Plaintiffs.

11. Plaintiffs were unaware of the dangerous propensities of the products which rendered them unsafe for their intended use. Plaintiffs used the aforementioned products in a manner that was reasonably anticipated by the Defendants. Further, during the periods that said Plaintiffs were exposed to the products of the Defendants, said products were being utilized in a manner which was intended by Defendants.

IMPLIED WARRANTY

12. All of the allegations contained in the previous paragraphs are realleged herein.

13. The Defendants impliedly warranted that their DBCP-containing products were of good and merchantable quality and fit for their intended use.

14. The Plaintiffs would show that they worked in close proximity to the DBCP-containing products of the Defendants and their presence was known or ought to have been reasonably anticipated by the Defendants. The implied warranty made by the Defendants that their aforesaid products were of a good and merchantable quality and were fit for their particular intended use was breached in that Plaintiffs' work with Defendants' products caused them to be exposed to DBCP and to be injured as a proximate result thereof.

EXEMPLARY DAMAGES

15. The Plaintiffs would show that the damages incurred as described herein were directly and proximately caused by the reckless and grossly negligent commissions and omissions, conscious indifference, and utter disregard for the welfare of the said Plaintiffs on the part of the Defendants herein, their agents, servants, employees, managers, superintendants, supervisors, and officers in that they ignored and concealed evidence available to them which indicated that DBCP and DBCP-containing materials were harmful and deadly to persons coming in contact with said materials. Consequently, users of DBCP-containing products, such as Plaintiffs, were deprived of the opportunity of free choice as to whether or not to expose themselves to the DBCP-containing products manufactured by Defendants. Plaintiffs would show that as a result of the conduct of Defendants as aforesaid, they should be awarded an amount that wound punish Defendants and act as a deterrent to Defendants and others from the commission of similar wrongs.

COMPENSATORY DAMAGES

16. As a direct and proximate result of Defendants tortious conduct as aforesaid, Plaintiffs, RODRIGO ESQUIVEL AGUILAR, JOSE ANTONIO ROJAS ARAYA, OLGER CARTIN ARAYA, OUIDIO GUERO ARGUELLO, PORFIRO TREJOS BARRANTES, JUAN MANUEL JIMENEZ CAMBRONERO, VASILIO SANCHEZ CARAZO, CLAUDIO SALAZAR CARBALLO, RAMON VICTORIANO PEREZ FERNANDEZ, DAGOBERTO ARAYA GARITA, JOSE ANTONIO ZUNIGA GUTIERREZ, FRANCISCO MELENDEZ MELENDEZ, ADRIAN GOMEZ MONTERO, MARIO TULIO VILLALOBOS MURRILLO, OLMAN MIRANDA NUNEZ, GERARDO ESPINOZA RODRIGUEZ, EDWIN CORRALES ROJAS, MANUEL SANCHEZ SEGURA, and VICTOR JULIO RODRIGUEZ VASQUEZ, have developed sexual and reproductive abnormalities and other related conditions and have been damaged in the following particulars for all of which suit is herein brought:

(a) Said Plaintiffs have suffered great physical pain and mental anguish and will continue to suffer great pain of body and mind throughout their lifetime;

(b) Plaintiffs have incurred and will continue to incur hospital, medical, pharmaceutical and other expenses in the future due to their exposure to Defendants' aforesaid products;

(c) Plaintiffs suffer an extraordinarily increased likelihood of developing cancer as a result of their exposure to DBCP-containing products manufactured, sold and/or distributed by the named Defendants;

(d) Plaintiffs suffer an extraordinarily increased risk of genetic damage as a result of their exposure to Defendants' aforesaid products;

(e) Plaintiffs will suffer a loss of earning capacity due to their exposure to said DBCP-containing products;

(f) Plaintiffs will incur expenses for domestic help and nursing care in the future due to their exposure to Defendants' aforesaid products;

(g) Plaintiffs have lost the capacity to enjoy life and will continue to suffer such loss in the future due to their exposure to Defendants' aforesaid products;

(h) Plaintiffs, ADALI CORDERO ALVARADO, AURORA AGUERO AGUERO, MARIA ESTER BERMUDEZ ALVARADO, ELISABETH SALAS RODRIGUEZ, ELVIVA BELLA LOPEZ, VINCENTA GARCIA BARRIENTOS, DELFINA ALMANZA PEREZ, ALEXA SUAREZ MORALES, IRIABEL ESPINOZA RODRIGUEZ, ROSA LIZANO SATRUCH, LUZ MARIA AGUERO AGUERO, CLARIBEL MIRANDA CAJNA, MARIA SALAZAR BALTODANO, VIRGITA HERNANDEZ ARGUEDAS, and ALEIDE GONZALEZ MORERA, have suffered and will continue to suffer the loss of their husbands', RODRIGO ESQUIVEL AGUILAR, JOSE ANTONIO ROJAS ARAYA, OLGER CARTIN ARAYA, OUIDIO AGUERO ARGUELLO, PORFIRO TREJOS BARRANTES, JUAN MANUEL JIMENEZ CAMBRONERO, VASILIO SANCHEZ CARAZO, CLAUDIO SALAZAR CARBALLO, RAMON VICTORIANO PEREZ FERNANDEZ, DAGOBERTO ARALA GARITA, JOSE ANTONIO ZUNIGA GUTIERREZ, FRANCISCO MELENDEZ MELENDEZ, ADRIAN GOMEZ MONTERO, MARIO TULIO VILLALOBOS MURRILLO, OLMAN MIRANDA NUNEZ, GERARDO ESPINOZA RODRIGUEZ, EDWIN CORRALES ROJAS, MANUEL SANCHEZ SEGURA, and VICTOR JULIO RODRIGUEZ VASQUEZ, services, consortium, financial support and the care and comfort

of their society respectively because of their said injuries and disabilities, and they will incur expenses medical and nursing attention rendered to her said husband in the future.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand judgment against the Defendants, and each of them, jointly and severally, for general and special damages and for punitive damages, for their costs expended herein, and for interest on said judgment from the date thereof until paid, at the legal rate, and for such other and further relief, both at law and in equity, to which the Plaintiffs may show themselves justly entitled.

Respectfully submitted,

BARON & BUDD

By: /s/ RUSSELL W. BUDD
Russel W. Budd

By: /s/ JANE N. SAGINAW
Jane N. Saginaw

Attorneys for Plaintiffs

AND

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By: /s/ FEDERICO CASTELAN SAYRE
Federico Castelan Sayre

APPENDIX H

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 86-4753 JGD (TX)

RODRIGO ESQUIVEL AGUILAR, et al.,
Plaintiffs,

v.

DOW CHEMICAL COMPANY, et al.,
Defendants.

ORDER VACATING ORDER TO SHOW CAUSE RE: REMAND; ORDER DISMISSING ACTION; ORDER REGARDING CONDITIONAL DISMISSAL

On December 1, 1986, this Court found that it had diversity jurisdiction of this action and then granted the defendants' motion to dismiss this action on forum non conveniens grounds. Following the hearing, the parties submitted post-hearing briefs on the conditions of dismissal. Numerous issues and complicated facts have arisen during the brief time that this matter has been before this Court. By this Order, the Court now clarifies its reasoning in reaching the decisions of December 1, 1986 and also sets forth the conditions of dismissal.

I. *UNDERLYING FACTS*

On October 15, 1986, the plaintiffs, thirty-four citizens and residents of Costa Rica, filed a complaint in state court alleging causes of action for negligence, strict liability, and breach of the implied warranty of merchantability. The plaintiffs alleged that while working on a

banana plantation in Costa Rica, they were exposed to a chemical, dibromochloropropane ("DBCP"), which had caused them to suffer personal injuries. Some of the plaintiffs' wives also brought claims for loss of consortium. The plaintiffs alleged that the defendants had manufactured, produced, sold, or had otherwise placed DBCP into the stream of commerce so that they were exposed to it.

Named as defendants were Dow Chemical Company ("Dow"), Shell Oil Company ("Shell"), and Amvac Chemical Corporation ("Amvac"). Neither Dow nor Shell are incorporated in California; neither has its principal place of business here. Amvac's principal place of business is in California, and it is incorporated in California. Although all of the defendants were of diverse citizenship from the foreign plaintiffs, the action could not be removed to federal court because of Amvac's presence. *See* 28 U.S.C. section 1441(b) (diversity action is removable "only if none of the parties in interest properly joined and served as defendants is a citizen of the state in which such action is brought").

On July 22, 1986, Dow filed a petition for removal; the other defendants joined in it. The reason alleged for removal was that testimony given at a deposition conducted on June 24, 1986 had disclosed that none of the DBCP produced by Amvac had been used in the Costa Rican operations of the plaintiffs' employer. Dow therefore claimed that Amvac was merely a sham defendant and that the action was now removable to federal court.

On July 29, 1986, Dow filed a motion in this Court to the dismiss the action on forum non convenience grounds. Amvac filed a motion on the same ground on

July 31, 1986. Shell joined in Dow's motion on August 4, 1986. Similar motions had been pending in state court at the time the action was removed.

Because of uncertainty about the status of Amvac as a defendant, on August 5, 1986, this Court served an order to show cause why the matter should not be remanded to state court. The order required that the defendants submit their papers by August 22, 1986 and that the plaintiffs file their response by August 29, 1986.

In accordance with the Court's order to show cause, the defendants submitted their memoranda of points and authorities on the remand issue by August 22, 1986, briefing in particular their contentions that Amvac was a "sham" defendant. On August 22, 1986, plaintiffs filed a motion to conduct further discovery on forum non conveniens. Their papers revealed for the first time that in fact the plaintiffs had filed an amended complaint in state court *one* day prior to Dow's filing of the petition for removal on July 22, 1986. As of August 22, 1986, none of the defendants had been served with the amended complaint, nor did any of them know of its existence. The amended complaint named as new defendants Dow Chemical International and Does 1 through 100.

Meanwhile, on September 10, 1986, this Court signed an order dismissing without prejudice Amvac from the action. The plaintiffs stated in their notice of dismissal that they had been unable to discover any evidence that the plaintiffs had been exposed to any DBCP-containing products manufactured or distributed by Amvac.

At a hearing conducted on September 15, 1986, this Court granted the plaintiffs' motion to conduct additional discovery with respect to the defendants' pending motions to dismiss on forum non conveniens. The Court allowed an additional month's discovery, noting that the plaintiffs had been on notice that this was an issue in the action and had presumably been conducting discovery on it since at least May 1986 when Dow filed a motion to dismiss on forum non conveniens grounds in state court.

Because the remand issue had never been resolved, that same date the Court served a minute order on all parties. In effect, the Court requested that the parties file supplemental briefs directed to the first amended complaint and the new issue of the Doe defendants. The Court suggested that the plaintiffs might use their additional discovery time to attempt to identify the Doe defendants. *See Bryant v. Ford Motor Co.*, 794 F.2d 450, 453 F.2d (9th Cir. 1986) (suggesting that the district court may wish to consider the state court plaintiff's response to a claim that Doe defendants are fictitious in determining whether remand is required).

On November 10, 1986, the Court continued resolution of the remand issue and the defendants' motion to dismiss on forum non conveniens until December 1, 1986. The Court expressed its concern that the petition for removal did not strictly comply with the requirements of 28 U.S.C. section 1446(a) in that the petition had been based upon and had attached to it the original complaint filed in state court, rather than the amended complaint. Although all of the parties upon learning of its existence had treated the amended complaint as the operative pleading, the Court requested that the

defendants file an amended petition for removal that would reflect the allegations of the amended complaint. *See London v. Standard Oil of California*, 417 F.2d 820, 822 (9th Cir. 1969) (allowing amendment of a removal petition to "cure any deficiency in establishing diversity jurisdiction").

On December 1, 1986, this Court, after first finding that it had jurisdiction over this matter, granted the defendants' motion to dismiss on forum non conveniens.

II. *Legal Issues*

A. Propriety of Removal

The plaintiffs in this action are all citizens of Costa Rico; the named corporate defendants are citizens of various states. Plaintiffs are claiming damages in excess of $10,000. District courts have original jurisdiction of matters where the sum in controversy exceeds $10,000 and the action is between "citizens of a State and citizens or subjects of a foreign state." 28 U.S.C. section 1332(a)(2).

At the time of removal, Amvac was still a defendant in this action, but the defendants had contended that recent deposition testimony revealed that Amvac was merely a "sham" defendant. Since Amvac was subsequently dismissed by the plaintiffs, the issues involving Amvac are now moot. Dow Chemical International was named as a defendant in the amended complaint, although it was apparently never served. But since Dow Chemical International is incorporated in Delaware and has its principal place of business in Michigan, its presence would not have destroyed diversity.

Therefore, the primary issue before this Court was the effect of the Doe defendant allegations contained in the amended complaint. In *Sorosky v. Burroughs Corp.*, 798 F.2d 1274 (9th Cir. 1986), the Ninth Circuit stated that as a general rule the presence of Doe defendants defeats diversity since it prevents a court from affirmatively ascertaining that complete diversity exists. But the Ninth Circuit explained that an exception might apply " 'when the Does are wholly fictitious or when the charges against the Does are so general that no clue is given as to their identity or their relationship to the cause of action.' " *Id.* at 1276. In *Sorosky*, the court found that allegations that the Does were "agents and employees" of the defendant, "while lean,' sufficed to give the defendants " 'some clue as to the possible identity' of the Doe defendants." *Id. See also Bryant v. Ford Motor Co.*, 794 F.2d 450, 451-53 (9th Cir. 1986) (purpose of allowing exception to rule was "the need to prohibit plaintiffs who initiate actions in state court from defeating removal jurisdiction by the use of pleading fictions").

At first glance, it appears that that the Doe allegations in the case at hand would fall within the parameters of the general rule set forth in *Sorosky, supra*, that the presence of Doe defendants ordinarily defeats diversity jurisdiction. The plaintiffs had alleged that each of the Doe defendants "was an agent, servant or employee of the remaining Defendants" and that the Doe defendants were responsible for the "importation, operation, design, distribution, ownership, possession, supervision, servicing, maintenance, inspection, repair, control, entrustment, use, furnishing, manufacturing or sale of the

premises which caused the injuries and damages herein alleged." Amended Complaint at ¶ ¶ 7, 8.

The complaint also alleged that the products in question were "manufactured, sold and distributed by Defendants Dow Chemical Company, Shell Oil Company, Amvac Chemical Corporation, Dow Chemical International, Inc. and DOES 1 through 100, inclusive, and each of them." Id. at ¶ 9.

However, given the peculiar circumstances of this action, the Court was convinced that the Doe defendants were "wholly fictitious." The Doe allegations were so broad that it was impossible to ascertain whether they did, in fact, provide the named defendants with a "clue" to the Doe defendants' identity. There also were no allegations in the amended complaint that even suggested that any of the employees or agents of the named defendants were foreign citizens. For in this particular situation, where all of the named plaintiffs were foreign citizens, only if the Doe defendants were foreign citizens would they defeat diversity.

In their supplemental brief on this issue, the plaintiffs did not claim or suggest that any of the Doe defendants were foreign residents. However, they identified Charles Hine Laboratories, Inc., a California corporation with its principal place of business in California, and Charles H. Hine, M.D., a California resident [the "Hine entities"], as the Doe defendants. The plaintiffs alleged that they would move the Court to further amend their complaint in order to add the Hine entities as defendants.

The plaintiffs did not contend that the Hine entities were agents or employees of the named defendants, but

they did claim that the Hine entities were "responsible for the testing" of DBCP-containing pesticides manufactured by Shell and that they had "participated in studies" with Dow researchers. The exhibits attached to the supplemental brief indicated that Charles H. Hine, M.D., while connected with the University of California, had conducted certain research related to DBCP during the 1950's and early 1960's.

The plaintiffs' "identification" of the Doe defendants posed some interesting questions. For one, the Hine entities do not appear to fall within the Doe allegations made in the amended complaint. The amended complaint stated that "each of the Defendants was an agent, servant or employee of the remaining Defendants." As noted above, the plaintiffs did not claim that the Hine entities were agents, servants, or employees of the named defendants, and the exhibits attached to their brief did not seem to indicate that this was the case. Furthermore, despite the extremely long and broad list of acts which the Doe defendants had allegedly performed, none of the Doe allegations related to the research and testing of the DBCP. There was also no suggestion that the Hine entities had "manufactured, sold and distributed" DBCP, although it had been alleged in the amended complaint that the Doe defendants, and "each of them," had done so. Thus, the Court concluded that the Hine entities were not identifiable by the Doe allegations.

Moreover, the presence of the Hine entities in the action would not destroy diversity since they were not foreign citizens. The plaintiffs argued, however, that the presence of Doe defendants that might be California

residents dictated that the case be remanded to state court because an action cannot be removed initially when a defendant's citizenship is the same as the forum court.

28 U.S.C. section 1441(b) indicates that an action based upon diversity of citizenship "shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the state in which such action is brought." On its face, this section suggests that a defendant who is a citizen of the forum state—but who would not otherwise destroy diversity—must be *properly joined and served* in order to prevent removal.

In the case at hand, neither Charles E. Hine, M.D. nor Charles Hine Laboratories, Inc. had been joined or served at the time this action was removed to federal court. It thus appears that any later amendment adding them to the action on the basis of Doe defendant allegations or otherwise would not mandate remand to the state court. Their presence could not destroy diversity of citizenship, although it would have prevented removal initially had they been properly joined and served at that time.

The defendants drew this Court's attention to a possible contrary interpretation of section 1441(b) in *Pecherski v. General Motors Corp.*, 636 F.2d 1156 (8th Cir. 1981). This Court is not persuaded that *Pecherski* is convincing authority for the proposition that *once an action has been removed*, the federal court must remand it to state court if newly-named defendants or defendants substituted for Doe defendants are citizens of the forum state—even if their citizenship would not destroy diversity. The Court reaches this conclusion in part from the clear language of section 1441.

Moreover, *Pecherski* differs factually from the case at hand. There the plaintiff was a citizen of the forum state. If the Doe defendant in question, "Jane Doe," were also a resident, the action could not have been removed because there would have been no diversity. Any argument that the action should not have been removed *solely* on the ground that she was a resident of the forum state was necessarily subsumed by the threshold question of diversity jurisdiction. But in the case now before the Court, the plaintiffs are not citizens of California. The presence of California defendants cannot destroy diversity. Therefore, the citizenship of the Hine entities would be significant only if they had been *joined and served* at the time the action was removed.

Both the Fifth and Tenth Circuits have held that once an action has been removed, a plaintiff may waive his right to object that some of the removing defendants were residents of the forum court. *McKay v. Boyd Construction Co.*, 769 F.2d 1084, 1086-87 (5th Cir. 1985); *American Oil Company v. McMullin*, 433 F.2d 1091 (10th Cir. 1970).

In *Grubbs v. General Electric Credit Corp.*, 405 U.S. 699, 92 S. Ct. 1344, 31 L.Ed.2d 612 (1972), the United States Supreme Court, in refusing to vacate a judgment on the ground that the district court had allegedly lacked jurisdiction, held that after an action had been tried on the merits "the issue in subsequent proceedings is not whether the case was properly removed, but whether the federal district court would have had original jurisdiction of the case had it been filed in that court." *Id.* at 702-03.

In reaching this conclusion, the Court distinguished its decision from *American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 71 S. Ct. 534, 95 L.Ed. 702 (1951). In *Finn*, the plaintiffs and one of the defendants had been citizens of the same state. Even though judgment had been rendered, the Court held that the action had been improperly removed, and it remanded the case to the district court with instructions to vacate the judgment. The distinguishing feature of *Finn* was that there was not complete diversity of citizenship. The district court did not have jurisdiction to try the case.

Waiver, of course, is not an issue in this case. But the authorities cited above suggest that removal procedures are not jurisdictional since they may be waived. There thus appears to be no reason why the "joined and served" language of section 1441 should not be strictly construed in those cases where diversity would not be destroyed. As noted previously, a district court has original jurisdiction of matters between "citizens of a State and citizens or Subjects of a foreign state." 28 U.S.C. section 1332(a)(2). This Court has original jurisdiction over the parties. The presence of potential California defendants cannot destroy this jurisdiction; nor would their presence require remand since they were not joined and served when the action was removd.

B. Forum Non Conveniens

The Ninth Circuit has apparently not decided whether federal law or state law should be applied in making a forum non conveniens determination. In *Miskow v. Boeing*, 664 F.2d 205 (9th Cir. 1981), the plaintiffs had filed an action in state court which the state court had dismissed for forum non conveniens. They then filed the

same action in federal court, and the district court dismissed it for the same reason. On appeal, the Ninth Circuit declined to decide whether state law would govern forum non conveniens, but noted that if there was any doubt, the plaintiffs would have "a difficult burden to convince this court that it should not follow the state court's determination." *Id.* at 207 f.2.

Because of the facts in the case, the Ninth Circuit's conclusion seems ambiguous. But the Ninth Circuit clearly followed the standards enunciated by the Supreme Court in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S. Ct. 839, 91 L.Ed. 1055 (1947), in affirming dismissal of the action on forum non conveniens.

More recently, in *Sibaja v. Dow Chemical Co.*, 757 F.2d 1215 (11th Cir.), *cert. denied*, 106 S. Ct. 347 (1985), the Eleventh Circuit held that federal law, rather than state law, applied to a forum non conveniens determination. In that action, which was brought by co-workers of these plaintiffs, the Eleventh Circuit first discussed whether forum non conveniens is substantive or procedural. It then concluded that federal law should apply because a "trial court only reaches the state rule of decision, relating to the character and result of the litigation, once it has decided to try the case and determine whether the plaintiff has a valid claim for relief." *Id.* at 1219.

This Court finds the reasoning of *Sibaja* persuasive and therefore applies federal forum non conveniens standards to this action. In *Piper Aircraft v. Reyno*, 454 U.S. 235, 102 S. Ct. 252, 70 L.Ed.2d 419 (1981), the Supreme Court stated that under its earlier decisions the principal forum non conveniens inquiry is "convenience." *Id.* at

249. The Court further stated that "dismissal will ordinarily be appropriate where trial in the plaintiff's chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable to offer any specific reasons of convenience supporting his choice." *Id.*

Traditionally the inquiry focuses upon the "private interest factors" affecting the litigants' convenience and the "public interest factors" affecting the forum's convenience. *Id.* at 258. Private interest factors include the ease of access to sources of proof; the availability of compulsory process for attendance of unwilling witnesses; the cost of obtaining willing witnesses; and the possibility of viewing the premises. Public factors include administrative difficulties, such as applying foreign law. *Id.* at f.6.

Applying these tests mandates dismissal of this action. All of the plaintiffs are citizens of Costa Rica and that is the situs of their alleged injuries. It is undisputed that much of the proof, including their medical records, is found in Costa Rica. Although plaintiffs have offered to bring certain witnesses to this forum at their expense, it is clear that this offer may only apply to "willing" witnesses—and many potential witnesses may not be willing or cooperative with the plaintiffs. It may thus be impossible for this Court to compel the attendance of vital witnesses or to compel the production of sources of proof. The convenience of the litigants could only be impaired by conducting the litigation in this forum.

Furthermore, the public factors bearing upon the administrative difficulties flowing from this action require dismissal. Neither the plaintiffs nor the defendants are citizens of this forum, and plaintiffs' alleged injuries did not occur in the State of California. Yet this Court would

be required to conduct an action in which all of the thirty-four plaintiffs are Spanish-speaking, and many of their physicians (as evidenced by their affidavits) and other important witnesses may also be Spanish-speaking.

This Court would also be placed in the position of applying an unfamiliar law—that of Costa Rica. In *Hurtado v. Superior Court of California*, 11 Cal. 3d 574, 114 Cal. Rptr. 106 (1974), the California Supreme Court held that in determining the law to apply, it would analyze the respective interests of the states involved (governmental interest approach) . . ." *Id.* at 579. In *Hurtado*—where the defendants were California residents, the site of the accident was California, and the plaintiffs had chosen California as their forum—the court held that California law applied.

Under the *Hurtado* analysis, Costa Rica clearly has the more important governmental interest in providing a forum for residents allegedly injured in that country. But except for the most tenuous of claims, there is almost an absence of connections between the plaintiffs and the named defendants and this forum. The fact that in the past California courts may have litigated unrelated-DBCP cases is not sufficient to find that California would have a governmental interest in applying its law. If that were the benchmark for deciding whether a state's law would apply or whether it provided a convenient forum, the doctrines or forum non conveniens and choice of law as we now know them would be eviscerated.

Finally, the plaintiffs contend that Costa Rica does not provide an adequate forum. While the documents submitted by the parties are somewhat contradictory, there does not appear to be any evidence that the plain-

tiffs could not obtain a fair trial in Costa Rica or that tort remedies are not available to them. While discovery may be conducted differently in a civil law country, that is not sufficient basis for requesting that an American court make a value judgment that these procedures are inadequate. Costa Rica provides an adequate forum. The named defendants have agreed to submit themselves to the jurisdiction of Costa Rican courts.

Even if the Court had determined that state law applied, it believes that its response to the forum non conveniens inquiry would have been the same. In *Holmes v. Syntex Laboratories*, 156 Cal. App. 3d 383, 202 Cal. Rptr. 386, an action in which British citizens were suing for injuries they allegedly sustained from drugs sold and ingested by them in England, a California appellate court appeared to restrict those situations in which California courts would dismiss for forum non conveniens.

But in determining that California provided a convenient forum, the court emphasized certain factors: 1) several of the defendants maintained their principal places of business in California; 2) the plaintiffs had alleged that the torts had been committed in California; and 3) the plaintiffs had presented facts demonstrating a connection between the defendants' conduct as it related to their injuries and California. While this showing may be minimal, it is clearly much greater than that found in the case at hand.

III. *CONDITIONS OF DISMISSAL*

Having considered the post-hearing briefs submitted by the parties on the conditions of dismissal, the Court now makes the following order:

1. That the defendants submit to Costa Rican jurisdiction;

2. That the defendants agree to waive any statute of limitations defenses that have arisen during the pendency of this action, i.e., since its commencement in California Superior Court; and

3. That the defendants consent to satisfy any final judgment that may be rendered against them in Costa Rica.

DATED: December 23, 1986

/s/ JOHN G. DAVIES
John G. Davies
United States District Court

APPENDIX I

IN THE
CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR DADE COUNTY

CASE NO. 87-05102

GENERAL JURISDICTION DIVISION

PERFECTO BARRANTES CABALCETA, et al.,
Plaintiff

v.

STANDARD FRUIT COMPANY, et al.,
Defendant

CIVIL ACTION SUMMONS

THE STATE OF FLORIDA:

To Each Sheriff of Said State:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the complaint or petition in this action on defendant:

SHELL OIL COMPANY
by and through its registered agent of record
C.T. Corporation Systems
8751 W. Broward Blvd.
Plantation, FL

Each defendant is required to serve written defenses to the complaint or petition on Plaintiff's attorney, to wit:

LOUIS S. ROBLES, P.A., whose address is: 75 S.W. 8th Street, Suite 401, Miami, FL 33130

M.Q. 2-12 2:30

within 20 days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED ON February 4, 1987.

Richard P. Brinker,
as Clerk of said Court

By: /s/ JENNIS L. RUSSELL
as Deputy Clerk

(Court Seal)

IN THE
CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 87-05102

PLAINTIFFS' ORIGINAL COMPLAINT

PEFECTO BARRANTES CABALCETA,

BENITO ALVAREZ ALVAREZ,

HERNAN VALDERDE ROMAN
AND MARIA MONGE CASTILLO,

JOSE PEDRO CARRILLO DOVER
AND IRIS MARIA JIMENEZ,

CARLOS RAMON PEREZ FERNANDEZ,

GERARDO PEREZ TREJOS,

BISAI FENANDEZ DELGADO,

NOE MARENCO IGLESIAS
AND CANDIDA VARGAS VARGAS,

VICTOR MANUEL FUENTES MONGE
AND ISABEL CARRANZA CARRANZA,

MARIO PENA PENA
AND ROSA MARIA MEZA,

REDUCINDO PICADO PORRAS
AND CLARA ERLINDA CASTRO ROLES,

ELIECER BUSTOS RIVERA
AND ANA RODRIGUEZ CASTRO,

VICTOR HUGO MADRIGAL SALAZAR,

ANGEL ANTONIO PEREZ TREJOS
AND TORENA ROTO DIAZ,

JOSE BERMUDEZ VARGAS
AND GRACE MARTINEZ MARTINEZ,

ELIECER PEREZ CAMPOS
AND VICTORIA ROSALES PIJARO,

ADAN MIRANDA CASTRO
AND MARIA ANTONIA OREZO GARCIA,

VICTOR RODRIGUEZ CASTRO
AND FRINDAL GARCIA CARRILLO,

EDWIN TENORIO PENA,

VICTOR MANUEL BUSTOS RUIZ,

JUAN MANUEL ZAMORA ZAMORA,

RAFAEL JIMINEZ CAMPOS,

GERARDO MORA ESPINOZA
AND FLOR MARI BENOCAL MADRIGAL,

JOSE MANUEL CASTRILLO CORTES
AND MELBA GUIDO RIVAS,

SAUL MUNOZ SIBAJA
AND RAFAELA ARRIETA PORRAS,

ROBERTO CERDA AGUILAR
AND SINAI TORRES ROSALES,

VICENTE FLORES VALVERDE
AND MARIA MAYELA VEGA FIGUREROA,

BOLIVAR ARIAS MORA,

ALFONSO CAMPOS RODRIGUEZ
AND MARIA JIMINEZ BENAVIDES,

JUAN BAUTISTA VASQUEZ
AND MARIA ISABEL CHAVARRIA SALAS,

VICTOR SOLIS ROJAS
AND ROSA BADILLA PEREZ,

MIGUEL CHAVARRIA ZUNIGA,

JOAQUIN ZAMORA ARRIETA,

TACITO CAMPOS GARCIA
AND YAMILETH NURIS VILLEGAS DIAS,

SEGUNDO RODRIGUEZ RODRIGUEZ
AND MARY ELIZONDO UMANA,

ELIECER ACOSTA MONTERO
AND EMMA JIMENEZ RAMIREZ,

MANUEL CHAVES NUNEZ
AND MIREYA RODRIGUEZ RODRIGUEZ,

CARLOS GARITA SANDI
AND MELITINA GONZALES,

EDWIN GOMEZ CASTRILLO
AND ODILI TORRES ACUNA,

MAGIN FERNANDEZ GARCIA
AND PAULA CORTEZ GOMEZ,

NEFTALI ARAYA GARITA
AND LEDA ESPINOZA GAMBOA,

MARGARITO ZUNIGA GUTIERREZ
AND ANAIS SANCHEZ ROJAS,

DANIEL LORIA MORERA
AND PETRA BERTA NAVARRETE TORRES,

MIGUEL ZUNIGA PENA
AND MARIA DE LA CRUZ GONZALES GONZALES,

ISIAS SANCHEZ RIVERA
AND FIDELIA ALVARADO SOLORZANO,

AUGUSTO LEITON RODRIGUEZ
AND MERCEDES RODRIGUEZ ARRIETA,

ANGEL LOBO ROJAS
AND MARGOT VARELA RAMIREZ,

CASIMIRO LOPEZ SANDOVAL
AND ALEJANDRINA VEGA VILLALOBOS,

JOSE SOSSA SOSSA
AND FLORY ALFARO JIMENEZ,

ANTONIO GUTIERREZ ZUMBADO
AND MARIA DE LOS ANGELES,

GERARDO PERAZA GARRO
AND NELLY UMANA ARIAS,

ELIAS HERNANDEZ BADILLA,

BENEDICTO CAMPOS CORRALES,

MARIO SOLANO JIMENEZ,

BOLIVAR ARIAS MORA,

PEDRO JIMENEZ MURILLO,

JOSE GAMBOA RODRIGUEZ,

RODRIGO GARITA SANDI,

RODRIGO ESQUIVEL AGUILAR and
ADALI CORDERO ALVARADO;

JOSE ANTONIO ROJAS ARAYA and
AURORA AGUERO;

OLGER CARTIN ARAYA;

OUIDIO AGUERO ARGUELLO and
MARIA ESTER BERMUDEZ ALVARADO;

PORFIRO TREJOS BARRANTES and
ELISABETH SALAS RODRIGUEZ;

JUAN MANUEL JIMENEZ CAMBRONERO and
ELVIVA BELLO LOPEZ;

VASILIO SANCHEZ CARAZO and
VINCENTA GARCIA BARRIENTOS;

CLAUDIO SALAZAR CARBALLO and
DELFINA ALMANZA PEREZ;

RAMON VICTORIANO PEREZ FERNANDEZ and
ALEXA SUAREZ MORALES;

DAGOBERTO ARAYA GARITA;

JOSE ANTONIO ZUNIGA GUTIERREZ and
IRIABEL ESPINOZA RODRIGUEZ;

FRANCISCO MELENDEZ MELENDEZ and
ROSA LIZANO SATRUCH;

ADRIAN GOMEZ MONTERO;

MARIO TULIO VILLALOBOS MURRILLO and
LUZ MARIA AGUERO AGUERO;

OLMAN MIRANDA NUNEZ and
CLARIBEL MIRANDA CAJNA;

GARARDO ESPINOZA RODRIGUEZ and
MARIA SALAZAR BALTODANO;

EDWIN CORRALES ROJAS and
VIRGITA HERNANDEZ ARGUEDAS;

MANUEL SANCHEZ SEGURA and
ALEIDE GONZALEZ MORERA;

VICTOR JULIO RODRIGUEZ VASQUEZ;

DOMINGO CAMPOS ALFARO;

ISMAIL CAMPOS ALPIZAR and
DEYANIRA CORDERO ALVARADO;

OVIDIO MORERA ALVARADO and
FLORINDA ROJAS DURAN;

ALVARO MORERA ALVAREZ and
JEREMY MORERA LOPEZ;

JESUS HERNANEZ BADILLA and
ELIDIETH ROMAN AZOFEIFA;

EDWIN LEON BARBOZA, ET. UX.;

EFRAIM HERRA BARBOZA;

WALDEMAR LOAIZA CALVO;

EDURADO PEREZ CAMPOS and
LUZ MARINA CAMPOS RODRIGUEZ;

CLAUDIO SALAZAR CARBALLO and
DELFINA ALMANZA PEREZ;

JORGE VAZQUEZ CARRILLO and
NOEMY SALINAS SALINAAS;

EFRAIN NUNEZ CASTRO, ET. UX.;

JOEL DINARTE CASTRO;

JORGE CASTRO CASTRO and
NURY BARBOZA MORA;

SERGIO ZAMORA CASTRO and
CLARA MARIA CHAVEZ VARGAS;

ALCIBIADES NUNEZ CESPEDES and
MARIA ESTER MONTERO BOGANTES;

MIGUEL ANGEL STELLER CHAVES and
MARIA DEL SOCORRO SANCHEZ OSES;

DIDIER ARIAS ELIZONDO and
IRENE BARRERA CHAVARRIA;

GREGORIA PEREZ ESPINOZA and
TERESA SANCHEZ ADOLIO;

SIGIFREDO MORALES ESPINOSA;

FRANCISCO ARIAS FALLAS and
MARITZA GOMEZ PEREZ;

RIGOBERTO GARITA GARITA and
MARIA CRISTINA CRUZ MARTINEZ;

MANUEL GOMEZ GOMEZ and
DEYANIRA ENRIQUEZ QUEVARA;

ANGEL SOLANO GONZALES and
LUZ RODRIGUES RAMIREZ;

FRANCISCO MORERA GONZALES and
ELOISA RAMIREZ CAMPOS;

MARCIANO SOLANO GONZALES and
FLORA ELENA FERNANDEZ ROBLES;

ANDRES VEGA GRANADOS and
MARTA JIMENEZ GONZALES;

ALFREDO BERMUDEZ HERNANDEZ and
MARIA LUISA BERMUDEZ ORDONEZ;

JUAN FIGUEROA MATARRITA and
MIREYA PEREZ PEREIRA;

URIEL NUNEZ MOYA and
MIRIAM CARTIN ARAYA;

ELI ORDONEZ MURILLO and
NATIVIDAD ROBLES DURATES;

ISMAEL SALAS NUNEZ and
BASELISA MEDINA MATARRITA;

ANTONIO VILLALOBOS ORTIZ and
MARITZA SOSSA SOSSA;

JORGE VEGA PEREZ;

CARLOS LUIS MUNOZ RAMIREZ;

FRANCISCO RAMIREZ RAMIREZ and
XINIA VINDAS CASTILLO;

VICENTE GUEVARA REYES and
MARIA CECILIA DURAN CORRALES;

GERARDO ESPINOZA RODRIGUEZ;

DANIEL ZUMBADO SALAS and
LEDA MARIA ROSALES ROSALES;

MARIO ZUMBADO SALAS and
ORLENDIA CASCANTE NAVARRO;

RUBEN MORALES SALAZAR and
BLANCA NIEVES ARIAS QUESADA;

ABELINO ROJAS SEQUEIRA;

JOSE OBANDO SEQUEIRA and
JUDITH CAMPOS GONZALEZ;

JOSE SIBAJA SOTA and
BLANCA NIEVES CASCANTE NAVARRO;

ELEI ELIZONDO UMANA and
ROSALIA SOLANO GONZALEZ;

JUAN ELIZONDO UMANA;

ARNOLDO GALLO VALLEJOS;

MANUEL FLORES VALVERDE

Plaintiffs

versus

STANDARD FRUIT COMPANY,
STANDARD FRUIT AND STEAMSHIP COMPANY,
DOLE FRESH FRUIT COMPANY,
CASTLE & COOKE, INC.,
DOW CHEMICAL COMPANY
AND SHELL OIL COMPANY,

Defendants

PLAINTIFFS' ORIGINAL COMPLAINT

COME NOW Plaintiffs PERFECTO BARRANTES CABALCETA, BENITO ALVAREZ ALVAREZ, HERNAN VALDERDE ROMAN AND MARIA MONGE CASTILLO, JOSE PEDRO CARRILLO DOVER AND IRIS MARIA JIMENEZ, CARLOS RAMON PEREZ FERNANDEZ, GERARDO PEREZ TREJOS, BISAI FERNANDEZ DELGADO, NOE MARENCO IGLESIAS AND CANDIDA VARGAS VARGAS, VICTOR MANUEL FUENTES MONGE AND ISABEL CARRANZA CARRANZA, MARIO PENA PENA AND ROSA MARIA MEZA, REDUCINDO PICADO PORRAS AND CLARA ERLINDA CASTRO ROLES, ELIECER BUSTOS RIVERA AND ANA RODRIGUEZ CASTRO, VICTOR HUGO MADRIGAL SALAZAR, ANGEL

ANTONIO PEREZ TREJOS AND TORENA ROTO DIAZ, JOSE BERMUDEZ VARGAS AND GRACE MARTINEZ MARTINEZ, ELIECER PEREZ CAMPOS AND VICTORIA ROSALES PIJARO, ADAN MIRANDA CASTRO AND MARIA ANTONIA OREZO GARCIA, VICTOR RODRIGUEZ CASTRO AND FRINDAL GARCIA CARRILLO, EDWIN TENORIO PENA, VICTOR MANUEL BUSTOS RUIZ, JUAN MANUEL ZAMORA ZAMORA, RAFAEL JIMINEZ CAMPOS, GERARDO MORA ESPINOZA AND FLOR MARI BENOCAL MADRIGAL, JOSE MANUEL CASTRILLO CORTES AND MELBA GUIDO RIVAS, SAUL MUNOZ SIBAJA AND RAFAELA ARRIETA PORRAS, ROBERTO CERDA AGUILAR AND SINAI TORRES ROSALES, VINCENTE FLORES VALVERDE AND MARIA MAYELA VEGA FIRURERoA, BOLIVAR ARIAS MORA, ALFONSO CAMPOS RODRIGUEZ AND MARIA JIMENEZ BENAVIDES, JUAN BAUTISTA VASQUEZ AND MARIA ISABEL CHAVARRIA SALAS, VICTOR SOLIS ROJAS AND ROSA BADILLA PEREZ, MIGUEL CHAVARRIA ZUNIGA, JOAQUIN ZAMORA ARRIETA, TACITO CAMPOS GARCIA AND YAMILETH NURIS VILLEGAS DIAS, SEGUNDO RODRIGUEZ RODRIGUEZ AND MARY ELIZONDO UMANA, ELIECER ACOSTA MONTERO AND EMMA JIMENEZ RAMIREZ, MANUEL CHAVES NUNEZ AND MIREYA RODRIGUEZ RODRIGUEZ, CARLOS GARITA SANDI AND MELITINA GONZALES, EDWIN GOMEZ CASTRILLO AND ODILI TORRES ACUNA, MAGIN FERNANDEZ GARCIA AND PAULA CORTEZ GOMEZ, NEFTALI ARAYA GARITA AND LEDA ESPINOZA GAMBOA, MARGARITO ZUNIGA GUTIERREZ AND ANAIS

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1. This is an action for damages in excess of the sum of Five Thousand and No/100 ($5,000.00) dollars.

2 Plaintiffs are citizens and residents of Costa Rica. Defendants are doing business in, and are residents of Dade County, Florida. Therefore, venue is proper in this Court under FLA. STAT. ANN. § 47.051.

3. Defendant STANDARD FRUIT COMPANY is a Delaware corporation with its corporate headquarters located at 2300 Glades Road, East Tower, Boca Raton, Florida, 33431-0980. Plaintiffs allege that during all times material to this action, this Defendant has transacted substantial business in the State of Florida from which it has derived substantial revenues. This Defendant can be served at its corporate headquarters pursuant to FLA. STAT. ANN. §§ 48.081(1)(d) and (2).

4. Defendant STANDARD FRUIT AND STEAMSHIP COMPANY is a Delaware corporation qualified to transact business in the State of Florida. Service of process of such Defendant is predicated on FLA. STAT. ANN. § 48.081(3) and FLA. STAT. ANN. § 48.091. (Defendant's resident agent designated for service of process pursuant to § 48.091 is CT Corporation Systems, 8751 West Broward Boulevard, Plantation, Florida 33324.

5. Defendant DOLE FRESH FRUIT COMPANY is a Nevada corporation qualified to transact business in the State of Florida. Service of process of such Defendant is predicated on FLA. STAT. ANN. § 48.081(3) and FLA. STAT. ANN. § 48.091. Defendant's resident agent designated for service of process pursuant to § 48.091 is CT Corporation Systems, 8751 West Broward Boulevard, Plantation, Florida 33324.

6. Defendant CASTLE & COOKE, INC. is a Hawaii corporation qualified to transact business in the State of Florida. Service of process of such Defendant is predicated on FLA. STAT. ANN. § 48.081(3) and FLA. STAT. ANN. § 48.091. Defendant's resident agent designated for service of process pursuant to § 48.091 is CT Corporation Systems, 8751 West Broward Boulevard, Plantation, Florida 33324.

7. Defendant DOW CHEMICAL COMPANY is a Delaware corporation qualified to transact business in the State of Florida. Service of process of such Defendant is predicated on FLA. STAT. ANN. § 48.081(3) and FLA. STAT. ANN. § 48.091. Defendant's resident agent designated for service of process pursuant to § 48.091 is CT Corporation Systems, 8751 West Broward Boulevard, Plantation. Florida 33324.

8. Defendant SHELL OIL COMPANY is a Delaware corporation qualified to transact business in the State of Florida. Service of process of such Defendant is predicated on FLA. STAT. ANN. § 48.081(3) and FLA. STAT. ANN. § 48.091. Defendant's resident agent designated for service of process pursuant to § 48.091 is CT Corporation Systems, 8751 West Broward Boulevard, Plantation, Florida 33324.

9. This cause of action is predicated on negligence and intentional tort theories and on products liability theories of strict liability, implied warranty and negligence, as more specifically alleged herein. The products complained of are nematocides containing the chemical dibromochloropropane, or DBCP. The product manufactured, sold and distributed by the Defendant Dow Chemical Company was marketed under the trade name

"Fumazone." The product manufactured, sold and distributed by the Defendant Shell Oil Company was marketed under the trade name "Nemagon."

10. Plaintiffs PERFECTO BARRANTES CABALCETA, BENITO ALVAREZ ALVAREZ, HERNAN VALDERDE ROMAN AND MARIA MONGE CASTILLO, JOSE PEDRO CARRILLO DOVER AND IRIS MARIA JIMENEZ, CARLOS RAMON PEREZ FERNANDEZ, GERARDO PEREZ TREJOS, BISAI FERNANDEZ DELGADO, NOE MARENCO IGLESIAS AND CANDIDA VARGAS VARGAS, VICTOR MANUEL FUENTES MONGE AND ISABEL CARRANZA CARRANZA, MARIO PENA PENA AND ROSA MARIA MEZA, REDUCINDO PICADO PORRAS AND CLARA ERLINDA CASTRO ROLES, ELIECER BUSTOS RIVERA AND ANA RODRIGUEZ CASTRO, VICTOR HUGO MADRIGAL SALAZAR, ANGEL ANTONIO PEREZ TREJOS AND TORENA ROTO DIAZ, JOSE BERMUDEZ VARGAS AND GRACE MARTINEZ, ELIECER PEREZ CAMPOS AND VICTORIA ROSALES PIJARO, ADAN MIRANDA CASTRO AND MARIA ANTONIA OREZO GARCIA, VICTOR RODRIGUEZ CASTRO AND FRINDAL GARCIA CARRILLO, EDWIN TENORIO PENA, VICTOR MANUEL BUSTOS RUIZ, JUAN MANUEL ZAMORA ZAMORA, RAFAEL JIMINEZ CAMPOS, GERARDO MORA ESPINOZA AND FLOR MARI BENOCAL MADRIGAL, JOSE MANUEL CASTRILLO CORTES AND MELBA GUIDO RIVAS, SAUL MUNOZ SIBAJA AND RAFAELA ARRIETA PORRAS, ROBERTO CERDA AGUILAR AND SINAI TORRES ROSALES, VICENTE FLORES VALVERDE AND MARIA MAYELA VEGA FIGUREROA, BOLI-

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RODRIGUEZ, RODRIGO GARITA SANDI, RODRIGO ESQUIVEL AGUILAR AND ADALI CORDERO ALVARADO; JOSE ANTONIO ROJAS ARAYA AND AURORA AGUERO AGUERO; OLGER CARTIN ARAYA; QUIDIO AGUERO ARGUELLO AND MARIA ESTER BERMUDEZ ALVARADO; PORFIRO TREJOS BARRANTES AND ELISABETH SALAS RODRIGUEZ; JUAN MANUEL JIMENEZ CAMBRONERO AND ELVIVA BELLO LOPEZ; VASILIO SANCHEZ CARAZO AND VINCENTA GARCIA BARRIENTOS; CLAUDIO SALAZAR CARABALLO AND DELFINA ALMANZA PEREZ; RAMON VICTORIANO PEREZ FERNANDEZ AND ALEXA SUAREZ MORALES; DAGOBERTO ARAYA GARITA; JOSE ANTONIO ZUNIGA GUTIERREZ AND IRIABEL ESPINOZA RODRIGUEZ; FRANCISCO MELENDEZ MELENDEZ AND ROSA LIZANO SATRUCH; ADRIAN GOMEZ MONTERO; MARIO TULIO VILLALOBOS MURRILLO AND LUZ MARIA AGUERO AGUERO; OLMAN MIRANDA NUNEZ AND CLARIBEL MIRANDA CAJNA; GERARDO ESPINOZA RODRIGUEZ AND MARIA SALAZAR BALTODANO; EDWIN CORRALES ROJAS AND VIRGITA HERNANDEZ ARGUEDAS; MANUEL SANCHEZ SEGURA AND ALEIDE GONZALEZ MORERA; VICTOR JULIO RODRIGUEZ VASQUEZ; DOMINGO CASTRO ALFARO; ISMAIL CAMPOS ALPIZAR AND DEYANIRA CORDERO ALVARADO; OVIDIO MORERA ALVARADO AND FLORINDA ROJAS DURAN; ALVARO MORERA ALVAREZ AND JEREMY MORERA LOPEZ; JESUS HERNANDEZ BADILLA AND ELIDIETH ROMAN AZOFEIFA; EDWIN LEON BARBOZA; EFRAIM HERRA

BARBOZA; WALDEMAR LOAIZA CALVO; EDUARADO PEREZ CAMPOS AND LUZ MARINA CAMPOS RODRIGUEZ; CLAUDIO SALAZAR CARBALLO AND DELFINA ALMANZA PEREZ; JORGE VAZQUEZ CARRILLO AND NOEMY SALINAS SALINAAS; EFRAIN NUNEZ CASTRO; JOEL DINARTE CASTRO; JORGE CASTRO CASTRO AND NURY BARBOZA MORA; SERGIO ZAMORA CASTRO AND CLARA MARIA CHAVEZ VARGAS; ALCIBIADES NUNEZ CESPEDES AND MARIA ESTER MONTERO BOGANTES; MIGUEL ANGEL STELLER CHAVES AND MARIA DEL SOCORRO SANCHEZ OSES; DIDIER ARIAS ELIZONDO AND IRENE BARRERA CHAVARRIA; GREGORIA PEREZ ESPINOZA AND TERESA SANCHEZ ADOLIO; SIGIFREDO MORALES ESPINOSA; FRANCISCO ARIAS FALLAS AND MARITZA GOMEZ PEREZ; RIGOBERTO GARITA GARITA AND MARIA CRISTINA CRUZ MARTINEZ; MANUEL GOMEZ GOMEZ AND DEYANIRA ENRIQUEZ QUEVARA; ANGEL SOLANO GONZALES AND LUZ RODRIGUES RAMIREZ; FRANCISCO MORERA GONZALEZ AND ELOISA RAMIREZ CAMPOS; MARCIANO SOLANO GONZALEZ AND FLORA ELENA FERNANDEZ ROBLES; ANDRES VEGA GRANADOS AND MARTA JIMENEZ GONZALES; ALFREDO BERMUDEZ HERNANDEZ AND MARIA LUISA BERMUDEZ ORDONEZ; JUAN FIGUEROA MATARRITA AND MIREYA PEREZ PEREIRA; URIEL NUNEZ MOYA AND MIRIAM CARTIN ARAYA; ELI ORDONEZ MURILLO AND NATIVIDAD ROBLES DURATES; ISMAEL SALAS NUNEZ AND BASELISA MEDINA MATARRITA; ANTONIO VIL-

LALOBOS ORTIZ AND MARITZA SOSSA SOSSA; JORGE VEGA PEREZ; CARLOS LUIS MUNOZ RAMIREZ; FRANCISCO RAMIREZ AND XINIA VINDAS CASTILLO; VICENTE GUEVARA REYES AND MARIA CECILIA DURAN CORRALES; GERARDO ESPINOZA RODRIGUEZ; DANIEL ZUMBADO SALAS AND LEDA MARIA ROSALES ROSALES; MARIO ZUMBADO SALAS AND ORLENDIA CASCANTE NAVARRO; RUBEN MORALES SALAZAR AND BLANCA NIEVES ARIAS QUESADA; ABELINO ROJAS SEQUEIRA; JOSE OBANDO SEQUEIRA AND JUDITH CAMPOS GONZALEZ; JOSE SIBAJA SOTA AND BLANCA NIEVES CASCANTE NAVARRO; ELEI ELIZONDO UMANA AND ROSALIA SOLANO GONZALEZ; JUAN ELIZONDO UMANA; ARNOLDO GALLO VALLEJOS; and MANUEL FLORES VALVERDE, allege that they were exposed to Fumazone and Nemagon in years up to and including the early 1980's and as a result of such exposure have suffered serious and permanent mental and physical injuries including, but not limited to, loss of reproductive function. Plaintiffs also have an extraordinarily increased risk of other diseases, including but not limited to stomach cancer and other forms of cancer. Spousal Plaintiffs have suffered loss of consortium. The exposed Plaintiffs came into contact with dibromochloropropane while working on banana plantations operated by Defendant Standard Fruit Company in Costa Rica.

NEGLIGENCE

11. All of the allegations in paragraphs 1 through 10 are realleged herein.

12. The injuries of Plaintiffs are a direct and proximate result of the negligence of Defendants Dow Chemical Company and Shell Oil Company in that said Defendants sold and/or otherwise put into the stream of interstate and international commerce, DBCP-containing materials which said Defendants knew, or in the exercise of ordinary care sought to have known, were deleterious and highly harmful to said Plaintiffs' health and well being. The Defendants were negligent in one, some and/or all of the following respects, these being the proximate causes of said Plaintiffs' illnesses and disabilities.

(a) In failing to adequately warn Plaintiffs of the dangerous characteristics of DBCP;

(b) In failing to inform Plaintiffs of safe protective clothing and equipment, if any existed, to prevent Plaintiffs from being harmed by DBCP;

(c) In failing to place adequate warnings on the containers of the aforementioned DBCP-containing products to warn of the hazards of contact with DBCP.

(d) In failing to exercise reasonable care to publish, adopt and enforce a safety plan or manual for handling and applying DBCP-containing products;

(e) In failing to develop and use a substitute material for DBCP in the aforementioned products; and

(f) In failing to test DBCP prior to releasing these products for sale.

13. The injuries of Plaintiffs are also due to the negligence of Defendants Standard Fruit Company, Dole Fresh Fruit Company, Castle & Cooke, Inc., and Standard Fruit and Steamship Company in failing to exercise reasonable

care to prevent Plaintiffs' harmful exposure to DBCP-containing products which Defendants knew or should have known were hazardous to Plaintiffs. Defendants were negligent in the following particulars:

(a) In failing adequately to supervise and instruct Plaintiffs in the safe and proper application of DBCP-containing products;

(b) In failing to implement proper methods and techniques of application of said products;

(c) In failing to instruct Plaintiffs in and enforce the wearing of adequate protective clothing and equipment during the application of said products;

(d) In failing to warn Plaintiffs of the hazards of exposure to said products;

(e) In failing to test said products for possible adverse health effects;

(f) In concealing from Plaintiffs information concerning the observed effects of said products on Plaintiffs and their co-workers;

(g) In failing adequately to monitor the health of Plaintiffs exposed to said products;

(h) In failing to place adequate labels on containers of said products to warn of the dangers of said products; and

(i) In failing to use substitute nematocides for said products.

STRICT LIABILITY

14. All of the allegations contained in paragraphs 1 through 13 are realleged herein.

15. The DBCP-containing products that were used and applied by Plaintiffs were designed and manufactured by Defendant Dow Chemical Company and Shell Oil Company and subsequently sold, directly and indirectly, to the employers of Plaintiffs. These products left the hands of said Defendants in a defective and unreasonably dangerous condition in the following respects:

(a) Said DBCP-containing products did not contain an adequate and timely warning regarding the serious health hazards associated with DBCP;

(b) Said products did not contain an adequate and timely warning to the effect that protective equipment should be used when working with DBCP;

(c) Said products were defectively designed in that they contained DBCP although a substitute for this chemical was available at all times material to this litigation.

(d) Said products were defectively designed in that they did not contain an adequate and timely warning concerning the hazards of DBCP and the need for safety precautions when using DBCP; and

(e) Said products were unreasonably dangerous *per se*.

16. Defendants Dow Chemical Company and Shell Oil Company are and/or were engaged in the business of manufacturing and/or distributing such DBCP-containing products and these products, without substantial change in condition after they were sold, were a producing cause of the damages sustained by Plaintiffs.

17. Plaintiffs were unaware of the dangerous propensities of the products which rendered them unsafe for their intended use. Plaintiffs used the aforementioned

products in a manner that was reasonably anticipated by the Defendants. Further, during the periods that said Plaintiffs were exposed to the products of the Defendants, said products were being utilized in a manner which was intended by Defendants.

IMPLIED WARRANTY

18. All of the allegations contained in paragraphs 1 through 17 are realleged herein.

19. Defendants Dow Chemical Company and Shell Oil Company impliedly warranted that their DBCP-containing products were of good and merchantable quality and fit for their intended use.

20. The Plaintiffs would show that they worked in close proximity to the DBCP-containing products of the Defendants and their presence was known or ought to have been reasonably anticipated by the Defendants. The implied warranty made by the Defendants that their aforesaid products were of a good and merchantable quality and were fit for their particular intended use was breached in that Plaintiffs' work with Defendants' products caused them to be exposed to DBCP and to be injured as a proximate result thereof.

INTENTIONAL TORT

21. All of the allegations contained in paragraphs 1 through 20 are realleged herein.

22. The injuries of Plaintiffs are also due to the intentional malfeasance of Defendants Standard Fruit Company, Standard Fruit and Steamship Company, Dole Fresh Fruit Company and Castle & Cooke, Inc. and are the direct and proximate results of these Defendants' voli-

tional acts. Each of these Defendants knew of the danger posed by DBCP-containing products, yet knowingly, consciously and with substantial certainty of the consequences of their actions proximately caused Plaintiffs injuries in the following respects:

(a) Defendants knowingly concealed information concerning the observed health effects of DBCP-containing products from Plaintiffs;

(b) Defendants knew of the hazards posed by DBCP-containing products yet used said products in the operations involving Plaintiffs;

(c) Defendants knew of the hazards posed by DBCP-containing products and by the methods of application used yet continued to use these methods;

(d) Defendants knew of the hazards posed by DBCP-containing products yet failed to provide adequate protective clothing and equipment to Plaintiffs; and

(e) Defendants knew of the hazards posed by DBCP-containing products yet did not instruct Plaintiffs in proper application techniques.

COMPENSATORY DAMAGES

23. As a direct and proximate result of Defendants tortious conduct as aforesaid, Plaintiffs PERFECTO BARRANTES CABALCETA, BENITO ALVAREZ ALVAREZ, HERNAN VALDERDE ROMAN AND MARIA MONGE CASTILLO, JOSE PEDRO CARRILLO DOVER AND IRIS MARIA JIMENEZ, CARLOS RAMON PEREZ FERNANDEZ, GERARDO PEREZ TREJOS, BISAI FERNANDEZ DELGADO, NOE MARENCO IGLESIAS AND CANDIDA VARGAS VARGAS,

VICTOR MANUEL FUENTES MONGE AND ISABEL CARRANZA CARRANZA, MARIO PENA PENA AND ROSA MARIA MEZA, REDUCINDO PICADO PORRAS AND CLARA ERLINDA CASTRO ROLES, ELIECER BUSTOS RIVERA AND ANA RODRIGUEZ CASTRO, VICTOR HUGO MADRIGAL SALAZAR, ANGEL ANTONIO PEREZ TREJOS AND TORENA ROTO DIAZ, JOSE BERMUDEZ VARGAS AND GRACE MARTINEZ MARTINEZ, ELIECER PEREZ CAMPOS AND VICTORIA ROSALES PIJARO, ADAN MIRANDA CASTRO AND MARIA ANTONIA OREZO GARCIA, VICTOR RODRIGUEZ CASTRO AND FRINDAL GARCIA CARRILLO, EDWIN TENORIO PENA, VICTOR MANUEL BUSTOS RUIZ, JUAN MANUEL ZAMORA ZAMORA, RAFAEL JIMINEZ CAMPOS, GERARDO MORA ESPINOZA AND FLOR MARI BENOCAL MADRIGAL, JOSE MANUEL CASTRILLO CORTES AND MELBA GUIDO RIVAS, SAUL MUNOZ SIBAJA AND RAFAELA ARRIETA PORRAS, ROBERTO CERDA AGUILAR AND SINAI TORRES ROSALES, VICENTE FLORES VALVERDE AND MARIA MAYELA VEGA FIGUREROA; BOLIVAR ARIAS MORA, ALFONSO CAMPOS RODRIGUEZ AND MARIA JIMENEZ BENAVIDES, JUAN BAUTISTA VASQUEZ AND MARIA ISABEL CHAVARRI'A SALAS, VICTOR SOLIS ROJAS AND ROSA BADILLA PEREZ, MIGUEL CHAVARRIA ZUNIGA, JOAQUIN ZAMORA ARRIETA, TACITO CAMPOS GARCIA AND YAMILETH NURIS VILLEGAS DIAS, SEGUNDO RODRIGUEZ RODRIGUEZ AND MARY ELIZONDO UMANA, ELIECER ACOSTA MONTERO AND EMMA JIMENEZ RAMIREZ, MANUEL CHAVES NUNEZ AND MIREYA RODRIGUEZ RODRIGUEZ, CARLOS GA-

RITA SANDI AND MELITINA GONZALES, EDWIN GOMEZ CASTRILLO AND ODILI TORRES ACUNA, MAGIN FERNANDEZ GARCIA AND PAULA CORTEZ GOMEZ, NEFTALI ARAYA GARITA AND LEDA ESPINOZA GAMBOA, MARGARITO ZUNIGA GUTIERREZ AND ANAIS SANCHEZ ROJAS, DANIEL LORIA MORERA AND PETRA BERTA NAVARRETE TORRES, MIGUEL ZUNIGA PENA AND MARIA DE LA CRUZ GONZALES GONZALES, ISAIAS SANCHEZ RIVERA AND FIDELIA ALVARADO SOLORZANO, AUGUSTO LEITON RODRIGUEZ AND MERCEDES RODRIGUEZ ARRIETA, ANGEL LOBO ROJAS AND MARGOT VARELA RAMIREZ, CASIMIRO LOPEZ SANDOVAL AND ALEJANDRINA VEGA VILLALOBOS, JOSE SOSSA SOSSA AND FLORY ALFARO JIMENEZ, ANTONIO GUTIERREZ ZUMBADO AND MARIA DE LOS ANGELES, GERARDO PERAZA GARRO AND NELLY UMANA ARIAS, ELIAS HERNANDEZ BADILLA, BENEDICTO CAMPOS CORRALES, MARIO SOLANO JIMENEZ, BOLIVAR ARIAS MORA, PEDRO JIMENEZ MURILLO, JOSE GAMBOA RODRIGUEZ, RODRIGO GARITA SANDI, RODRIGO ESQUIVEL AGUILAR AND ADALI CORDERO ALVARADO; JOSE ANTONIO ROJAS ARAYA AND AURORA AGUERO AGUERO; OLGER CARTIN ARAYA; OUIDIO AGUERO ARGUELLO AND MARIA ESTER BERMUDEZ ALVARADO; PORFIRO TREJOS BARRANTES AND ELISABETH SALAS RODRIGUEZ; JUAN MANUEL JIMENEZ CAMBRONERO AND ELVIVA BELLO LOPEZ; VASILIO SANCHEZ CARAZO AND VINCENTA GARCIA BARRIENTOS; CLAUDIO SALAZAR CARBALLO AND DELFINA

ALMANZA PEREZ; RAMON VICTORIANO PEREZ FERNANDEZ AND ALEXA SUAREZ MORALES; DAGOBERTO ARAYA GARITA; JOSE ANTONIO ZUNIGA GUTIERREZ AND IRIABEL ESPINOZA RODRIGUEZ; FRANCISCO MELENDEZ MELENDEZ AND ROSA LIZANO SATRUCH; ADRIAN GOMEZ MONTERO; MARIO TULIO VILLALOBOS MURRILLO AND LUZ MARIA AGUERO AGUERO; OLMAN MIRANDA NUNEZ AND CLARIBEL MIRANDA CAJNA; GERARDO ESPINOZA RODRIGUEZ AND MARIA SALAZAR BALTODANO; EDWIN CORRALES ROJAS AND VIRGITA HERNANDEZ ARGUEDAS; MANUEL SANCHEZ SEGURA AND ALEIDE GONZALEZ MORERA; VICTOR JULIO RODRIGUEZ VASQUEZ; DOMINGO CASTRO ALFARO; ISMAIL CAMPOS ALPIZAR AND DEYANIRA CORDERO ALVARADO; OVIDIO MORERA ALVARADO AND FLORINDA ROJAS DURAN; ALVARO MORERA ALVAREZ AND JEREMY MORERA LOPEZ; JESUS HERNANDEZ BADILLA AND ELIDIETH ROMAN AZOFEIFA; EDWIN LEON BARBOZA; EFRAIM HERRA BARBOZA; WALDEMAR LOAIZA CALVO; EDURADO PEREZ CAMPOS AND LUZ MARINA CAMPOS RODRIGUEZ; CLAUDIO SALAZAR CARBALLO AND DELFINA ALMANZA PEREZ; JORGE VAZQUEZ CARRILLO AND NOEMY SALINAS SALINAAS; EFRAIN NUNEZ CASTRO; JOEL DINARTE CASTRO; JORGE CASTRO CASTRO AND NURY BARBOZA MORA; SERGIO ZAMORA CASTRO AND CLARA MARIA CHAVEZ VARGAS; ALCIBIADES NUNEZ CESPEDES AND MARIA ESTER MONTERO BOGANTES; MIGUEL ANGEL STELLER CHAVES AND

MARIA DEL SOCORRO SANCHEZ OSES; DIDIER ARIAS ELIZONDO AND IRENE BARRERA CHAVARRIA; GREGORIA PEREZ ESPINOZA AND TERESA SANCHEZ ADOLIO; SIGIFREDO MORALES ESPINOSA; FRANCISCO ARIAS FALLAS AND MARITZA GOMEZ PEREZ; RIGOBERTO GARITA GARITA AND MARIA CRISTINA CRUZ MARTINEZ; MANUEL GOMEZ GOMEZ AND DEYANIRA ENRIQUEZ QUEVARA; ANGEL SOLANO GONZALES AND LUZ RODIGUES RAMIREZ; FRANCISCO MORERA GONZALEZ AND ELOISA RAMIREZ CAMPOS; MARCIANO SOLANO GONZALEZ AND FLORA ELENA FERNANDEZ ROBLES; ANDRES VEGA GRANADOS AND MARTA JIMENEZ GONZALES; ALFREDO BERMUDEZ HERNANDEZ AND MARIA LUISA BERMUDEZ ORDONEZ; JUAN FIGUEROA MATARRITA AND MIREYA PEREZ PEREIRA; URIEL NUNEZ MOYA AND MIRIAM CARTIN ARAYA; ELI ORDONEZ MURILLO AND NATIVIDAD ROBLES DURATES; ISMAEL SALAS NUNEZ AND BASELISA MEDINA MATARRITA; ANTONIO VILLALOBOS ORTIZ AND MARITZA SOSSA SOSSA; JORGE VEGA PEREZ; CARLOS LUIS MUNOZ RAMIREZ; FRANCISCO RAMIREZ RAMIREZ AND XINIA VINDAS CASTILLO; VICENTE GUEVARA REYES AND MARIA CECILIA DURAN CORRALES; GERARDO ESPINOZA RODRIGUEZ; DANIEL ZUMBADO SALAS AND LEDA MARIA ROSALES ROSALES; MARIO ZUMBADO SALAS AND ORLENDIA CASCANTE NAVARRO; RUBEN MORALES SALAZAR AND BLANCA NIEVES ARIAS QUESADA; ABELINO ROJAS SEQUEIRA; JOSE OBANDO SEQUEIRA AND JUDITH CAMPOS GONZALEZ; JOSE SIBAJA SOTA AND BLANCA NIEVES CASCANTE NAVARRO; ELEI ELIZONDO UMANA AND ROSALIA SOLANO GONZALEZ; JUAN ELIZONDO UMANA; ARNOLDO GALLO VALLEJOS; and MANUEL FLORES VALVERDE, have been damaged in the following particulars for all of which suit is herein brought:

(a) Plaintiffs have sustained a total and permanent loss of reproductive function and have sustained and will always suffer great sexual impairment;

(b) Said Plaintiffs have suffered great physical pain and mental anguish and will continue to suffer great pain of body and mind throughout their lifetime;

(c) Plaintiffs have incurred and will continue to incur hospital, medical, pharmaceutical and other expenses in the future due to their exposure to aforesaid products;

(d) Plaintiffs suffer an extraordinarily increased likelihood of developing cancer as a result of their exposure to aforesaid products;

(e) Plaintiffs suffer an extraordinarily increased risk of genetic damage as a result of their exposure to aforesaid products;

(f) Plaintiffs will suffer a loss of earning capacity due to their exposure to said DBCP-containing products;

(g) Plaintiffs will incur expenses for domestic help and nursing care in the future due to their exposure to Defendants' aforesaid products;

(h) Plaintiffs have lost the capacity to enjoy a full and normal life and will continue to suffer such loss in the future due to their exposure to aforesaid products:

(i) Plaintiffs MARIA MONGE CASTILLO, IRIS MARIA JIMENEZ, CANDIDA VARGAS, ISABEL CARRANZA CARRANZA, ROSA MARIA MEZA, CLARA ERLINDA CASTRO ROLES, ANA RODRIGUEZ CASTRO, TORENA ROTO DIAZ, GRACE MARTINEZ MARTINEZ, VICTORIA ROSALES PIJARO, MARIA ANTONIO OREZO GARCIA, FRINDAL GARCIA CARRILLO, FLOR MARI BENOCAL MADRIGAL, MELBA GUIDO RIVAS, RAFAELA ARRITA PORRAS, SINAI TORRES ROSALES, MARIA MAYELA VEGA FIGUREROA, MARIA JIMENEZ BENAVIDES, MARIA ISABEL CHAVARRIA SALAS, ROSA BADILLA PEREZ, YAMILETH NURIS VILLEGAS DIAS, MARY ELIZONDO UMANA, EMMA JIMENEZ RAMIREZ, MIREYA RODRIGUEZ, MELITINA GONZALES, ODILI TORRES ACUNA, PAULA CORTEZ GOMEZ, LEDA ESPINOZA GAMBOA, ANAIS SANCHEZ ROJAS, PETRA BERTA NAVARRETE TORRES, MARIA DE LA CRUZ GONZALES GONZALES, FIDELIA ALVARADO SOLORZANO, MERCEDES RODRIGUEZ ARRIETA, MARGOT VARELA RAMIREZ, ALEJANDRINA VEGA VILLALOBOS, FLORY ALFARO JIMENEZ, MARIA DE LOS ANGELES, NELLY UMANA ARIAS, ADALI CORDERO ALVARADO; AURORA AGUERO AGUERO; MARIA ESTER BERMUDEZ ALVARADO; ELISABETH SALAS RODRIGUEZ; ELVIVA BELLO LOPEZ; VINCENTE GARCIA BARRIENTOS; DELFINA ALMANZA PEREZ; ALEXA SUAREZ MORALES; IRIABEL ESPINOZA RODRIGUEZ; ROSA LIZANO SATRUCH; LUZ MARIA AGUERO AGUERO; CLARIBEL MIRANDA CAJNA; MARIA SALAZAR BALTODANO; VIRGITA HERNANDEZ ARGU-

EDAS; ALEIDE GONZALEZ MORERA; DEYANIRA CORDERO ALVARADO; FLORINDA ROJAS DURAN; JEREMY MORERA LOPEZ; ELIDIETH ROMAN AZOFEIFA; LUZ MARINA CAMPOS RODRIGUEZ; DELFINA ALMANZA PEREZ; NOEMY SALINAS SALINAAS; NURY BARBOZA MORA; CLARA MARIA CHAVEZ VARGAS; MARIA ESTER MONTERO BOGANTES; MARIA DEL SOCORRO SANCHEZ OSES; IRENE BARRERA CHAVARRIA; TERESA SANCHEZ ADOLIO; MARITZA GOMEZ PEREZ; MARIA CRISTINA CRUZ MARTINEZ; DEYANIRA ENRIQUEZ QUEVARA; LUZ RODRIGUES RAMIREZ; ELOISA RAMIREZ CAMPOS; FLORA ELENA FERNANDEZ ROBLES; MARTA JIMENEZ GONZALES; MARIA LUISA BERMUDEZ ORDONEZ; MIREYA PEREZ PEREIRA; MIRIAM CARTIN ARAYA; NATIVIDAD ROBLES DURATES; BASELISA MEDINA MATARRITA; MARITZA SOSSA SOSSA; XINIA VINDAS CASTILLO; MARIA CECILIA DURAN CORRALES, LEDA MARIA ROSALES ROSALES; ORLENDIA CASCANTE NAVARRO; BLANCA NIEVES ARIAS QUESADA; JUDITH CAMPOS GONZALEZ; BLANCA NIEVES CASCANTE NAVARRO; ROSALIA SOLANO GONZALEZ; have suffered and will continue to suffer the loss of their husbands' services, consortium, financial support and the care and comfort of their society because of their said injuries and disabilities, and said wives will incur expenses for medical and nursing attention rendered to their said husbands in the fture.

EXEMPLARY DAMAGES

24. The Plaintiffs would show that the damages incurred as described herein were directly and proximately

caused by the willful, malicious and intentional acts and omissions, conscious indifference, and utter disregard for the welfare of the said Plaintiffs on the part of the Defendants herein, their agents, servants, employees, managers, superintendents, supervisors, and officers in that they ignored and concealed evidence available to them which indicated that DBCP and DBCP-containing materials were harmful and deadly to persons coming in contact with said materials and in that they willfully, maliciously, intentionally and recklessly continued to require and allow Plaintiffs to be exposed to aforesaid substances and products. Plaintiffs would show that as a result of such conduct as Defendants, they should be awarded an amount that would punish Defendants and act as a deterrent to Defendants and others from the commission of similar wrongs.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs PERFECTO BARRANTES CABALCETA, BENITO ALVAREZ ALVAREZ, HERNAN VALDERDE ROMAN AND MARIA MONGE CASTILLO, JOSE PEDRO CARRILLO DOVER AND IRIS MARIA JIMENEZ, CARLOS RAMON PEREZ FERNANDEZ, GERARDO PEREZ TREJOS, BISAI FERNANDEZ DELGADO, NOE MARENCO IGLESIAS AND CANDIDA VARGAS VARGAS, VICTOR MANUEL FUENTES MONGE AND ISABEL CARRANZA CARRANZA, MARIO PENA PENA AND ROSAS MARIA MEZA, REDUCINDO PICADO PORRAS AND CLARA ERLINDA CASTRO ROLES, ELIECER BUSTOS RIVERA AND ANA RODRIGUEZ CASTRO, VICTOR HUGO MADRIGAL SALAZAR, ANGEL ANTONIO PEREZ TREJOS AND TORENA ROTO DIAZ, JOSE BERMUDEZ VARGAS AND GRACE MARTINEZ

MARTINEZ, ELIECER PEREZ CAMPOS AND VICTORIA ROSALES PIJARO, ADAN MIRANDA CASTRO AND MARIA ANTONIO OREZO GARCIA, VICTOR RODRIGUEZ CASTRO AND FRINDAL GARCIA CARRILLO, EDWIN TENORIO PENA, VICTOR MANUEL BUSTOS RUIZ, JUAN MANUEL ZAMORA, RAFAEL JIMINEZ CAMPOS, GERARDO MORA ESPINOZA AND FLOR MARI BENOCAL MADRIGAL, JOSE MANUEL CASTRILLO CORTES AND MELBA GUIDO RIVAS, SAUL MUNOZ SIBAJA AND RAFAELA ARRIETA PORRAS, ROBERTO CERDA AGUILAR AND SINAI TORRES ROSALES, VICENTE FLORES VALVERDE AND MARIA MAYELA VEGA FIGUREROA, BOLIVAR ARIAS MORA, ALFONSO CAMPOS RODRIGUEZ AND MARIA JIMENEZ BENAVIDES, JUAN BAUTISTA VASQUEZ AND MARIA ISABEL CHAVARRIA SALAS, VICTOR SOLIS ROJAS AND ROSA BADILLA PEREZ, MIGUEL CHAVARRIA ZUNIGA, JOAQUIN ZAMORA ARRIETA, TACITO CAMPOS GARCIA AND YAMILETH NURIS VILLEGAS DIAS, SEGUNDO RODRIGUEZ RODRIGUEZ AND MARY ELIZONDO UMANA, ELIECER ACOSTA MONTERO AND EMMA JIMENEZ RAMIREZ, MANUEL CHAVES NUNEZ AND MIREYA RODRIGUEZ RODRIGUEZ, CARLOS GARITA SANDI AND MELITINA GONZALES, EDWIN GOMEZ CASTRILLO AND ODILI TORRES ACUNA, MAGIN FERNANDEZ GARCIA AND PAULA CORTEZ GOMEZ, NEFTALI ARAYA GARITA AND LEDA ESPINOZA GAMBOA, MARGARITO ZUNIGA GUTIERREZ AND ANAIS SANCHEZ ROJAS, DANIEL LORIA MORERA AND PETRA BERTA NAVARRETE TORRES, MIGUEL

ZUNIGA PENA AND MARIA DE LA CRUZ GONZALES GONZALES, ISAIAS SANCHEZ RIVERA AND FIDELIA ALVARADO SOLORZANO, AUGUSTO LEITON RODRIGUEZ AND MERCEDES RODRIGUEZ ARRIETA, ANGEL LOBO ROJAS AND MARGOT VARELA RAMIREZ, CASIMIRO LOPEZ SANDOVAL AND ALEJANDRINA VEGA VILLALOBOS, JOSE SOSSA SOSSA AND FLORY ALFARO JIMENEZ, ANTONIO GUTIERREZ ZUMBADO AND MARIA DE LOS ANGELES, GERARDO PERAZA GARRO AND NELLY UMANA ARIAS, ELIAS HERNANDEZ BADILLA, BENEDICTO CAMPOS CORRALES, MARIO SOLANO JIMENEZ, BOLIVAR ARIAS MORA, PEDRO JIMENEZ MURILLO, JOSE GAMBOA RODRIGUEZ, RODRIGO GARITA SANDI, RODRIGO ESQUIVEL AGUILAR AND ADALI CORDERO ALVARADO; JOSE ANTONIO ROJAS ARAYA AND AURORA AGUERO AGUERO; OLGER CARTIN ARAYA ;OUIDIO AGUERO ARGUELLO AND MARIA ESTER BERMUDEZ ALVARADO; PORFIRO TREJOS BARRANTES AND ELISABETH SALAS RODRIGUEZ; JUAN MANUEL JIMENEZ CAMBRONERO AND ELVIVA BELLO LOPEZ; VASILIO SANCHEZ CARAZO AND VINCENTA GARCIA BARRIENTOS; CLAUDIO SALAZAR ÇARBALLO AND DELFINA ALMANZA PEREZ; RAMON VICTORIANO PEREZ FERNANDEZ AND ALEXA SUAREZ MORALES; DAGOBERTO ARAYA GARITA; JOSE ANTONIO ZUNIGA GUTIERREZ AND IRIABEL ESPINOZA RODRIGUEZ; FRANCISCO MELENDEZ MELENDEZ AND ROSA LIZANO SATRUCH; ADRIAN GOMEZ MONTERO; MARIO TULIO VILLALOBOS MURRILLO AND LUZ MARIA

AGUERO AGUERO; OLMAN MIRANDA NUNEZ AND CLARIBEL MIRANDA CAJNA; GERARDO ESPINOZA RODRIGUEZ AND MARIA SALAZAR BALTODANO; EDWIN CORRALES ROJAS AND VIRGITA HERNANDEZ ARGUEDAS; MANUEL SANCHEZ SEGURA AND ALEIDE GONZALEZ MORERA; VICTOR JULIO RODRIGUEZ VASQUEZ; DOMINGO CASTRO ALFARO; ISMAIL CAMPOS ALPIZAR AND DEYANIRA CORDERO ALVARADO; OVIDIO MORERA ALVARADO AND FLORINDA ROJAS DURAN; ALVARO MORERA ALVAREZ AND JEREMY MORERA LOPEZ; JESUS HERNANDEZ BADILLA AND ELIDIETH ROMAN AZOFEIFA; EDWIN LEON BARBOZA; EFRAIM HERRA BARBOZA; WALDEMAR LOAIZA CALVO; EDURADO PEREZ CAMPOS AND LUZ MARINA CAMPOS RODRIGUEZ; CLAUDIO SALAZAR CARBALLO AND DELFINA ALMANZA PEREZ; JORGE VAZQUEZ CARRILLO AND NOEMY SALINAS SALINAAS; EFRAIN NUNEZ CASTRO; JOEL DINARTE CASTRO; JORGE CASTRO CASTRO AND NURY BARBOZA MORA; SERGIO ZAMORA CASTRO AND CLARA MARIA CHAVEZ VARGAS; ALCIBIADES NUNEZ CESPEDES AND MARIA ESTER MONTERO BOGANTES; MIGUEL ANGEL STELLER CHAVES AND MARIA DEL SOCORRO SANCHEZ OSES; DIDIER ARIAS ELIZONDO AND IRENE BARRERA CHAVARRIA; GREGORIA PEREZ ESPINOZA AND TERESA SANCHEZ ADOLIO; SIGIFREDO MORALES ESPINOSA; FRANCISCO ARIAS FALLAS AND MARITZA GOMEZ PEREZ; RIGOBERTO GARITA GARITA AND MARIA CRISTINA CRUZ MARTINEZ; MANUEL GOMEZ GOMEZ AND DEYANIRA EN-

RIQUEZ QUEVARA; ANGEL SOLANO GONZALES AND LUZ RODRIGUES RAMIREZ; FRANCISCO MORERA GONZALEZ AND ELOISA RAMIREZ CAMPOS; MARCIANO SOLANO GONZALEZ AND FLORA ELENA FERNANDEZ ROBLES; ANDRES VEGA GRANADOS AND MARTA JIMENEZ GONZALES; ALFREDO BERMUDEZ HERNANDEZ AND MARIA LUISA BERMUDEZ ORDONEZ; JUAN FIGUEROA MATARRITA AND MIREYA PEREZ PEREIRA; URIEL NUNEZ MOYA AND MIRIAM CARTIN ARAYA; ELI ORDONEZ MURILLO AND NATIVIDAD ROBLES DURATES; ISMAEL SALAS NUNEZ AND BASELISA MEDINA MATARRITA; ANTONIO VILLALOBOS ORTIZ AND MARITZA SOSSA SOSSA; JORGE VEGA PEREZ; CARLOS LUIS MUNOZ RAMIREZ; FRANCISCO RAMIREZ RAMIREZ AND XINIA VINDAS CASTILLO; VICENTE GUEVARA REYES AND MARIA CECILIA DURAN CORRALES; GERARDO ESPINOZA RODRIGUEZ; DANIEL ZUMBADO SALAS AND LEDA MARIA ROSALES ROSALES; MARIO ZUMBADO SALAS AND ORLENDIA CASCANTE NAVARRO; RUBEN MORALES SALAZAR AND BLANCA NIEVES ARIAS QUESADA; ABELINO ROJAS SEQUEIRA; JOSE OBANDO SEQUEIRA AND JUDITH CAMPOS GONZALEZ; JOSE SIBAJA SOTA AND BLANCA NIEVES CASCANTE NAVARRO; ELEI ELIZONDO UMANA AND ROSALIA SOLANO GONZALEZ; JUAN ELIZONDO UMANA; ARNOLDO GALLO VALLEJOS; and MANUEL FLORES VALVERDE, demand judgment against the Defendants, and each of them, jointly and severally, for general and special damages and punitive damages, for their costs expended herein, and for

interest on said judgment from the date thereof until paid, at the legal rate, and for such other and further relief, both at law and in equity, to which the Plaintiffs may show themselves justly entitled.

Respectfully submitted,

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Louis S. Robles

APPENDIX J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 87-0457-Civ-Atkins

PERFECTO BARRANTES CABALCETA, et al.,
Plaintiffs,

v.

STANDARD FRIUT COMPANY, et al.,
Defendants.

(Filed July 21, 1987)

ORDER ON MOTION TO REMAND,
MOTION TO DISMISS,
AND RELATED MOTIONS

This cause is before the court on plaintiffs' Motion to Remand, and defendants' Motions to Dismiss for *Forum Non Conveniens*, Lack of Service of Process, Lack of Jurisdiction Over the Person, for Fraudulent Joinder, and More Definite Statement. The court has considered the pleadings submitted in this matter, the relevant law, and has heard oral argument. It is thereupon

ORDERED AND ADJUDGED as follows:

1. Plaintiffs' Motion to Remand is DENIED.

The court finds that removal was proper pursuant to 28 U.S.C., section 1441(b), on the ground that none of the parties is a citizen of Florida and that diversity of citizenship is present.

I. *Principal Place of Business of Standard Fruit Company and Standard Fruit and Steamship Company*

The court's main inquiry in this case concerns whether the principal place of business of any of the defendants is Florida. If so, removal would have been improper pursuant to the "no local citizen" limitation of the removal statute, 28 U.S.C., section 1441(b), which provides:

> (b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

A corporation is deemed to be a citizen of both the state of incorporation and the state of its principal of business for diversity purposes. 28 U.S.C., section 1332(c). To determine the principal place of business of a corporate party, the court must apply the "total activity" test. *Vareka Investments, N.V. v. American Investment Properties, Inc.*, 724 F.2d 907 (11th Cir. 1984). The test actually incorporates two tests: the nerve center test, which focuses on the locus of managerial and policymaking functions in the corporation, and the place of activities test, which focuses on the locus of production or sales activities. *Id.* at 910.

The two tests are applied in different factual situations. The nerve center test is applied to determine the prin-

cipal place of a corporation whose activities are scattered among several different states. *See Scot Typewriter Co. v. Underwood Corp.*, 170 F. Supp. 862 (S.D.N.Y. 1959). The place of activities test is applied to determine the principal place of business of a corporation whose activities are basically bifurcated between two different states. *Homestead Log Co. v. Square D Co.*, 555 F. Supp. 1056 (D. Idaho 1983). Thus, the principal place of business of a corporation with significant administrative authority and activity in one state and lesser executive offices but principal operations in another state has been held to be the latter state, *Kelly v. U.S. Steel Corp.*, 284 F.2d 850 (3d Cir. 1960), and the principal place of business of a corporation with its corporate headquarters in one state and its single activity in another will generally be in the state of its operations, *Lurie Co. v. Loew's San Francisco Hotel Corp.*, 315 F. Supp. 405 (N.D. Cal. 1970). As applied, therefore, the two tests have been found to be not only reconcilable, *see Toms v. Country Quality Meats, Inc.*, 610 F.2d 313, 315 n. 6 (5th Cir. 1980), but complementary, *J.A. Olson Co. v. City of Winona*, 818 F.2d 401, 410 (5th Cir. 1987).

The court finds the place of activities test to be the appropriate one for determining the principal place of business of Standard Fruit Company ("Standard Fruit"). Its operations occur in Ecuador, Honduras, and Costa Rica, and its executive and administrative functions occur in California and Florida. For purposes of determining diversity of citizenship, all aliens, whatever their nationality, are deemed to be citizens of the same jurisdiction. *K & H Business Consultants, Ltd. v. Cheltonian, Ltd.*, 567 F. Supp. 420 (D.N.J. 1983). In the

court's view, this rule is equally applicable to determining a corporation's principal place of business. This determination underlies that of corporate citizenship for purposes of diversity jurisdiction, and, in cases not presenting a federal question, removal jurisdiction. Thus, the fact that all of Standard Fruit's operations occur in alien jurisdictions is the controlling characteristic, and, for purposes of the place of activities test, the court concludes that Standard Fruit's operations occur in one jurisdiction. Although certain of its executive and administrative functions occur in two states in the United States, this fact does not support a conclusion that Standard Fruit's activities, including operations and management, are *scattered* throughout several jurisdictions within the meaning of the nerve center test. Rather, its activities are distinctly, though not equally, divided among three different jurisdictions, with its operations occurring solely in one of them.

Application of the place of activities test leads the court to the conclusion that Sandard Fruit's principal place of business is Latin America, not Florida, and that therefore its presence in the litigation does not contravene that no local citizen limitation in the removal statute. Standard Fruit is in the business of growing and exporting bananas in Costa Rica, Honduras, and Ecuador. All of its employees are in those three countries. Affidavit of Patrick Nelson at 16. Its day to day operational and management decisions are made at these places of operation. *Id.* at 35, 48-49. None of its operational activities take place in the United States.

The court need not reach the issue of whether Standard Fruit is actually a citizen of any of the Latin American countries in which its operations are centered, nor must

it address the possibility of corporate dual citizenship. *See Willems v. Barclays Bank, D.C.O.*, 263 F. Supp. 774 (S.D.N.Y. 1966). The removal issue as it pertains to Standard Fruit can be resolved on the basis of the court's finding that Standard Fruit's principal place of business is not Florida. *Accord Steinbock-Sinclair v. Amoco Int'l. Oil Co.*, 401 F. Supp. 19 (N.D. Ill. 1975).

The court further finds that Standard Fruit & Steamship Company's ("Standard Steamship") principal place of business is California by applying the nerve center test. The nerve center test is most appropriate in regard to Standard Steamship because its activities are scattered over six states. Its executive, administrative, and managerial activities take place in California, Mississippi, and Florida, and its operations occur in Delaware, New York, California, Mississippi, and Texas. On the record presented, Standard Steamship is neither an alien nor a Florida citizen such that removal would have been improper due to its presence in this litigation.

Standard Steamship has no employees in Florida, nor does its own assets or make sales in Florida. Its ties to Florida appear to be through the Dole Fresh Fruit Company. (It is not disputed that Dole's principal place of business is Florida.) Two of Standard Steamship's vice-presidents reside in Boca Raton and are also officers of Dole Fresh Fruit Company. It apparently has a logistics department in Boca Raton, which plaintiffs assert is responsible for the coordination of banana shipments. However, the record is lacking in any details as to what the logistics department actually does, and plaintiffs' conclusion is contradicted by evidence that the shipments are supervised from the terminals in Mississippi and four other states. In addition, this department is not staffed

by employees of Standard Steamship, but rather its administration is procured from Dole employees.

Standard Steamship's operations and employees are located outside of Florida. It receives fruit from Latin America at five terminals, located in Delaware, New York, California, Mississippi, and Texas. The terminal operations are overseen by a Standard Steamship employee at the Mississippi terminal.

Standard Steamship's directors reside in California. The Board of Directors meets there. Its president and two vice-presidents live there. Its corporate headquarters are in Los Angeles, where corporate books and records are prepared and maintained. tax returns are generated and filed, and corporate policy is determined. Affidavit of Patrick Nielson at par. 13.

On this record, the court finds that the locus of managerial and policymaking functions of Standard Steamship, that is, its nerve center, would be California. Its president, many of its officers, and directors reside there, one of its terminals is there, and, although its operations and managerial activities are scattered among five other states, its executive and policymaking activities appear to be centered at its corporate headquarters in California. Its activities in Florida, as in the other three states involved, are minimal compared to its activities in California. Thus, Standard Steamship is neither an alien nor a Florida citizen such that removal would be improper due to its presence.

II. *Fraudulent Joinder of Dole Fresh Fruit Company*

It is not disputed that Dole Fresh Fruit Company ("Dole") is a citizen of Florida. However, defendants

contend that Dole is fraudulently joined, and that, therefore, it must be ignored for purposes of determining removability. *Morris v. E.I. DuPont de Nemours & Co.*, 68 F.2d 788 (8th Cir. 1934); *Parks v. New York Times Co.*, 308 F.2d 474 (5th Cir. 1962).

The test for fraudulent joinder requires the removing party to show that there is no possibility that the plaintiff would be able to establish a cause of action against the resident defendant in state court. *Coker v. Amoco Oil Co.* 709 F.2d 1433, 1440 (11th Cir. 1983). That is, there must be no reasonable basis in fact or colorable ground supporting the claim against the joined defendant. *Goldberg v. CPC Int'l, Inc.*, 495 F. Supp. 233 (N.D. Cal. 1980). This determination must be based upon the plaintiff's pleading at the time of the petition for removal. *Pullman Co. v. Jenkins*, 305 U.S. 534, 537 (1939); *Coker*, 709 F.2d at 1440.

By applying these principles, the court finds that Dole has been fraudulently joined. Plaintiffs argue that Dole is a proper defendant in that it is the alter ego of, or has assumed liability for, Standard Fruit. However, plaintiffs' pleading at the time of the petition for removal is wholly lacking in legal and factual allegations to the effect that Dole is the alter ego of, or has assumed the liabilities of Standard Fruit. These allegations must be made to establish a cause of action. *See e.g., Gross v. Cohen*, 58 So. 2d 703 (Fla. 1952); *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114 (Fla. 1984). In regard to Dole, plaintiffs have merely alleged that Dole, along with other defendants, was negligent in causing, and strictly liable for, their injuries.

Plaintiffs argue that they need only establish a mere possibility. However, they must establish at least a colorable ground for these claims, and the record does not provide one. Dole was not in existence at the time plaintiffs' sustained their injuries. Furthermore, although Standard Fruit procures administrative services from Dole, the mere procurement of these services does not support a colorable claim that the two constitute a single operation. *Comp. Dania Jai-Alai*, 450 So. 2d at 1121.

Based upon the foregoing analysis, it appears that removal was proper in this case. The presence of Standard Fruit and Standard Steamship do not contravene the no local citizen limitation, and Dole, though a citizen of Florida, was not properly joined in this litigation.

2. Defendants' Motion to Dismiss for *Forum Non Conveniens* is GRANTED.

Defendants describe this cause as representing "one of the most wideranging efforts at forum shopping in legal history." Brief in Support of Motion to Dismiss at 1. They point out that fifty-eight of the plaintiffs herein filed suit in the Circuit Court for Dade County, Florida, in 1983. That case was subsequently removed to the Southern District of Florida, which dismissed it on the basis of *forum non conveniens*. *Sibaja v. Dow Chemical Co.*, No. 83-1347-Civ-JLK. The Eleventh Circuit affirmed the order of dismissal. *Sibaja v. Dow Chemical Co.*, 757 F.2d 1215 (11th Cir.), *cert. denied*, 106 S. Ct. 347 (1985).

Defendants further note that plaintiffs from Rodrigo Esquival Aguilar to Victor Julio Rodriguez Vasquez

brought suit in Superior Court for Los Angeles County, California in 1985. That case was subsequently removed to the Central District of California, which dismissed it on the basis of *forum non conveniens* in 1986. *Aquilar v. Dow Chemical Co.*, No. 86-4753 JGD (Tx.). That case is currently on appeal to the Ninth Circuit.

Further still, defendants note that plaintiffs from Domingo Castro Alfaro to Manuel Flores Valverde filed suit in Harris County, Texas in 1984. That case was subsequently removed to federal court, and then remanded to state court. Motions to Dismiss on the basis of *forum non conveniens* are currently pending before the state court.

Defendants acknowledge that the remaining plaintiffs have not previously filed suit in the United States. They argue, however, that the three earlier cases and the one before this court have common threads, including that fact that all plaintiffs are residents of Costa Rica, all allege, or it has been established that, they worked on Standard Fruit banana plantations, and all or almost all of them have pursued or are pursuing workers compensation claims in Costa Rica.

Against this background, defendants argue four bases for dismissal. First, they argue that this court must take judicial notice of the district court's ruling in *Sibaja*, and particularly of the facts established therein. Second, they argue that the *Sibaja* decision constitutes *res judicata* as to the claims filed in this cause by plaintiffs who filed claims in Sibaja. Third, they argue that the plaintiffs in *Alfaro* and in the case before this court are collaterally estopped from bringing this action, in that the court must follow the same analysis applied in *Sibaja*. Finally,

they argue that the present action must be dismissed under the doctrine of *forum non conveniens*.

Plaintiffs stand on their Motion to Remand, and do not argue any specific grounds in opposition to this motion.

First, the court takes judicial notice of the *Sibaja* decision pursuant to Rule 201(d) of the Federal Rules of Evidence. In a well-reasoned order, the district court dismissed the cause on the ground of *forum non conveniens*. The court found that the controlling law was set forth in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981) and *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). In applying the factors set forth in *Piper Aircraft* and *Gilbert*, the Court held that the considerations overwhelmingly weighed in favor of dismissal. The court held that the private interests to be considered under *Gilbert* were hampered by the fact that the alleged injuries occurred in Costa Rica.

> All the plaintiffs are Costa Rican. Most of the evidence and witnesses are in Costa Rica and none are in Florida, and compulsory process would not be available to compel production of this evidence or the attendance of these witnesses. The cost of obtaining the evidence from Costa Rica would be substantial, if possible. The Defendants would not be able to implead potential third party defendants located in Costa Rica in this action in Florida. And, as was the case in *Piper Aircraft*, the Plaintiffs have not offered any specific reasons showing the convenience of their choice.

Order of Dismissal at 4-5.

The court further reasoned that the public interest was not served by the choice of forum.

> It could not help but congest this Court's docket more than it would that of a Court at the situs of the injury simply because of the logistics of dealing with fifty-eight different Plaintiffs at this distance. It would force the Court to conduct a complex exercise in comparative law and consider a foreign law with which the Court is not familiar and which is in a foreign language. The avoidance of such comparisons is one of the objectives of the doctrine of *forum non conveniens. Piper Aircraft,* 102 S. Ct. at 263. It would require jurors to hear and decide a dispute that has no connection with this community. And finally, the Defendants have asserted that Costa Rica offers the Plaintiffs an alternative forum with an adequate remedy, an assertion which has not been rebutted by the Plaintiffs.

Order of Dismissal at 5.

Second, the court finds that the plaintiffs who filed claims in the *Sibaja* and *Aquilar* cases are barred by the doctrine of *res judicata* from bringing their claims in this action. The addition of new plaintiffs to a later complaint does not prevent application of *res judicata* to those plaintiffs who were parties to prior litigation. *See e.g. Sims v. Mack Trucks, Inc.*, 463 F. Supp. 1068 (E.D. Pa. 1979). Nor does that fact that the previous judgment was not entered on the merits, but rather on grounds of *forum non conveniens,* preclude application of *res judicata* in this instance. *See Pasteska v. Texaco, Inc.*, 565 F.2d 851 (3d Cir. 1977), in which the court held that a district court was bound by an earlier

forum non conveniens dismissal entered by another district court where identical objective criteria were relied upon by the appellants and identical material facts underlied the application of those criteria in each case.

Third, the court finds that the plaintiffs in *Alfaro* and in the case before this court are not collaterally estopped from litigating this issue in this court. Collateral estoppel is not generally applicable unless there exists either identity or privity between parties to the previous litigation and those involved in the new litigation. *See e.g., In re Gottheiner,* 703 F.2d 1136 (9th Cir. 1983). For privity between the parties to exist, there must be a substantial identity between them or a sufficient commonality of interests. *Id.* at 1139. Privity exists, for example, between a controlling shareholder in a corporation and the corporation, *Sparks Nugget, Inc. v. Commissioner,* 458 F.2d 631 (9th Cir. 1972), and between the successor in interest in property and the former owner, *In re Kors, Inc.*, 15 B.R. 444 (Bankr. D. Vt. 1981).

The court finds that the plaintiffs named in this lawsuit do not share a sufficient commonality of interests or substantial identity such that litigation affecting the rights of those who were parties in the *Sibaja* action is necessarily conclusive as to the rights of the new parties named in the instant action. Although the individual plaintiffs named in this action sustained their injuries in the same circumstances as those involved in the other actions, their interests derive from their own personal circumstances and injuries. On this basis, the court finds no privity between the parties in this case.

Finally, the court finds that, as to the *Alfaro* plaintiffs and the new plaintiffs named in the instant action, the

doctrine of *forum non conveniens* requires dismissal of this action for the same reasons cited by the district court in *Sibaja*. Defendants point out several determinative factors in the Motion to Dismiss.

a. Each individual plaintiff was allegedly exposed to the products complained of in Costa Rica.

b. Each individual plaintiff is a citizen and resident of Costa Rica.

c. The evidence and witnesses pertaining to the vendors and purchasers, employers, supervisors, physicians, hospital personnel, families, Costa Rican government officials, and documentary evidence are primarily located in Costa Rica.

d. Where such witnesses are available voluntarily, the cost of arranging for appearances in the Southern District of Florida would be substantial, if not prohibitive.

e. Most of the evidence and witnesses are not subject to the compulsory process of this court.

f. The witnesses and evidence available in the United States are primarily in places other than the Southern District of Florida, and so would not be more conveniently obtained in Miami than in Costa Rica or other places in this country.

g. The cause of action will be governed by Costa Rican law, with which Costa Rican courts have far greater familiarity.

h. The public interest is outweighed by the congestion of the court's docket and burdens upon local citizens serving as jurors.

i. The Costa Rican judicial system provides a forum and a remedy to the plaintiffs in the form of compensatory damages.

j. The defendants are subject to, or will submit to the jurisdiction of the Costa Rican judicial system.

k. Claims against other distributors and manufacturers not named in the suit, and third party claims for contribution can only be asserted through process issued and served in Costa Rica.

These factors are identical to those involved in the *Sibaja* case. The court finds that the private interests of the plaintiffs are similarly hampered by the Costa Rica situs in this case, and that the public interest is not served by plaintiffs choice of forum. As to the three new defendants in this action, Standard Fruit, Standard Steamship, and Dole, the court finds that their presence does not render this forum any more convenient than in the previous actions. As noted by defendants, the witnesses and evidence available in the United States are primarily located in places other than the Southern District of Florida. Neither Standard Fruit nor Standard Steamship have their principal places of business in Florida, or a substantial presence in Florida. Dole's relation to the case has not been demonstrated by plaintiffs, and therefore its presence in Florida would not contribute to the convenience of this forum.

For the foregoing reasons, the court finds that the doctrines of *res judicata* and *forum non conveniens* warrant dismissal of this action.

3. Defendants' Motion to Dismiss for Fraudulent Joinder is GRANTED for the reasons set forth in that

portion of this Order denying plaintiffs' Motion to Remand.

4. Defendants' Motion to Dismiss for Lack of Service of Process, Lack of Jurisdiction Over the Person, and for More Definite Statement are *DENIED* as moot in light of that portion of this Order dismissing this cause for *forum non conveniens.*

DONE AND ORDERED at Miami, Florida, this 21st day of July, 1987.

/s/ CLYDE ATKINS
United States District Judge

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